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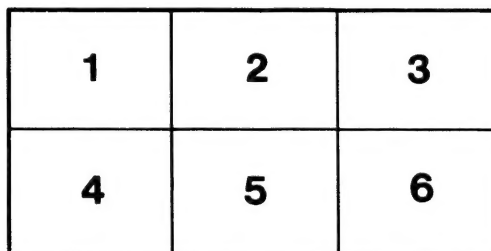
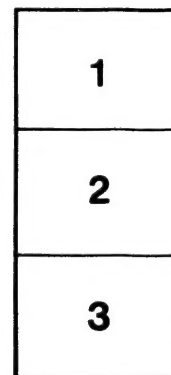
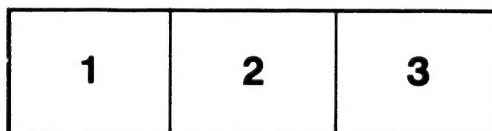
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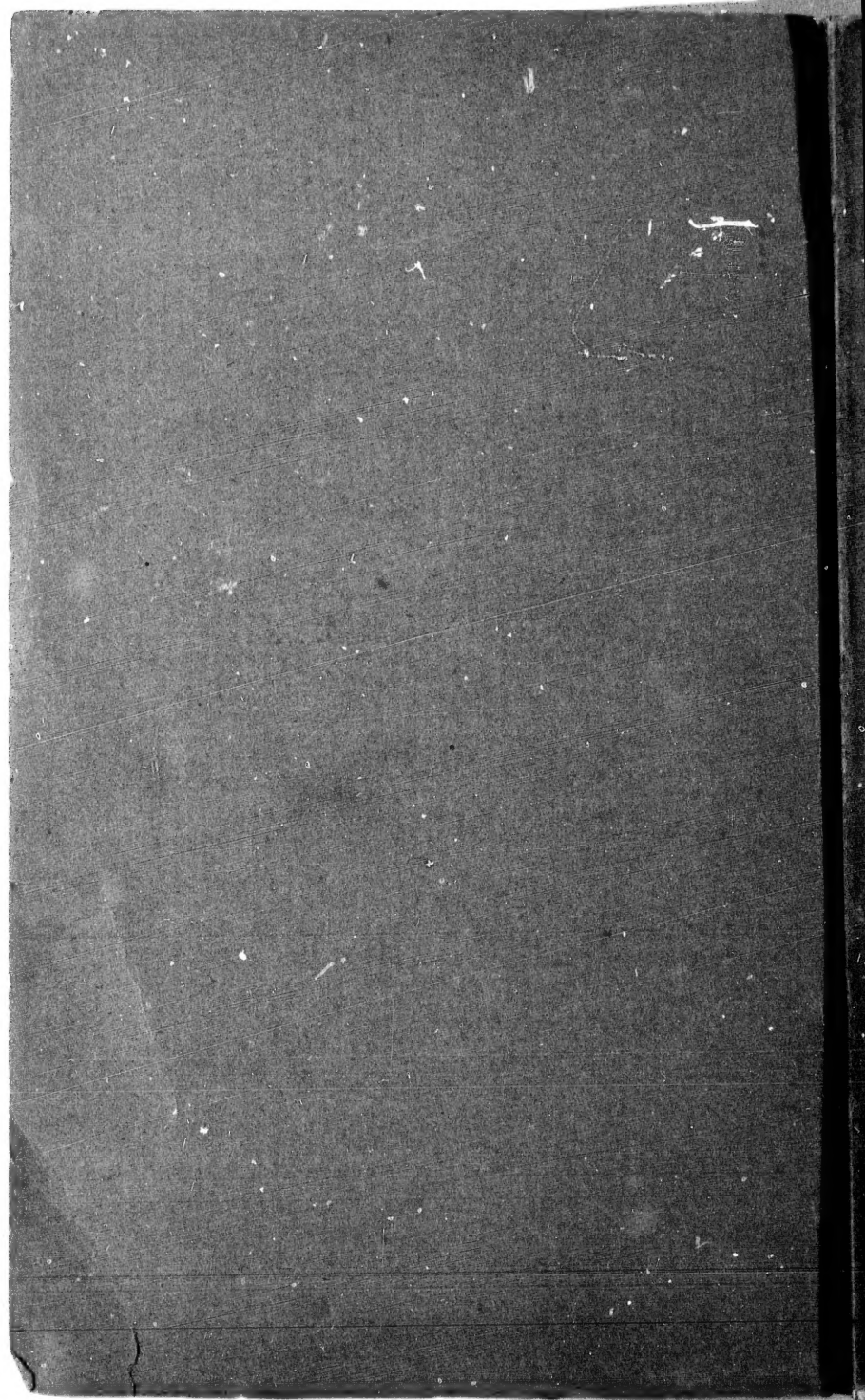
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IN THE VICE-ADMIRALTY COURT OF NOVA SCOTIA.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS" & HER } No. 472.
cargo. Action for forfeiture of said vessel and
cargo, &c., &c.

May 10, 1886. A writ of summons was issued to Wallace Graham on behalf of the Attorney General of Canada against the ship *David J. Adams* and her cargo in an action for violation of the convention of 1818. Also for the forfeiture of said vessel and cargo for violation of sundry acts of the Dominion Parliament as above set forth.

May 10. Wallace Graham filed copy of writ of summons.

May 13. The Judge at Chambers on the application of Robert L. Borden Counsel for plaintiff ordered that the writ of summons be amended by striking out certain words in the title of the action and by striking out certain words in the indorsement of claim on said writ of summons.

May 13. R. L. Borden filed his own affidavit made this day, the order to amend summons, the affidavit of P. A. Scott to lead warrant, and the copy of amended summons with minute of filing.

May 13. A warrant was issued to Wallace Graham on behalf of Her Majesty the Queen against the ship *David J. Adams* and her cargo in an action for forfeiture of said vessel and cargo.

On the 13th day of May, 1886. Before the Honorable James McDonald, Judge.

Upon reading the writ of summons herein and the several indorsements thereon and the affidavit and certificate of Benjamin Van Blarcom of the service thereof and the affidavit of Robert L. Borden herein sworn the 13th day of May 1886 and upon hearing Mr. Borden on behalf of the Crown—

It is ordered that the writ of summons in this action be amended by striking out of the title of the action and immediately before the words "Victoria by the Grace of God" in the said writ of summons the words "Also for forfeiture of the said vessel and her cargo for violation of chapter 12 of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1833 and the Acts in amendment thereof"

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and also that the said writ of summons and the indorsement of claim or statement of the nature of the claim endorsed on said writ of summons be amended by striking out of the said endorsement of claim or statement of the nature of the claim indorsed on said writ of summons the following words or paragraph at the end of the said indorsement of claim or statement of the nature of the claim indorsed on the said writ of summons namely "The said Honorable John S. D. Thompson Her Majesty's Attorney General for the Dominion of Canada also claims on behalf of Her Majesty the Queen to have the said ship *David J. Adams* and her cargo condemned as forfeited to Her Majesty the Queen for violation of chapter 12 of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1883 and intituled the Customs Act 1883 and the Acts of the said Parliament of the Dominion of Canada in amendment thereof" and the said writ of summons and the several indorsements thereon and the said indorsement of claim or statement of the nature of the claim indorsed on the said writ of summons, and all other proceedings in this cause are hereby amended accordingly.

May 15. The Judge at Chambers on the application of R. L. Borden ordered the immediate sale of a portion of the cargo of said vessel viz, about 1500 lbs. fresh unsalted halibut and 15 bbls. fresh unsalted bait or herrings by the Marshal or his Deputy at public Auction at or near Digby and without a Commission of sale being issued.

May 18. The Marshal filed original warrant with deputation and affidavit of service attached.

May 20. W. Graham filed original amended writ of summons with two affidavits of Van Blarcom annexed thereto, the affidavit of P. A. Scott made 13th inst., the affidavit of R. L. Borden made 15th inst. with exhibits annexed, and affidavit of B. Van Blarcom annexed to order to amend summons, with minute of filing.

May 25. The Judge at Chambers on the application of R. L. Borden ordered the sale of the remainder of the cargo on board said vessel by the Marshal or his Deputy at public auction at Digby without a Commission being issued therefor.

May 27. The Marshal filed the original order for sale for a portion of the cargo with exhibits annexed.

June 10. N. H. Meagher filed notice of appearance on behalf of Jesse Lewis of Gloucester Mass., the owner of the ship *David J. Adams* and her cargo; also filed the claim and affidavit of Jesse Lewis and the Bond of Daniel Cronan to the Queen for \$240, with minute of filing.

June 28. R. L. Borden filed before 12 o'clock noon his own affidavit made this day with exhibit and notice of motion for pleadings with minute of filing.

June 28. W. Graham filed affidavit of Capt. Scott and two affidavits of R. L. Borden with minute of filing.

June 29. At Chambers 12 o'clock noon. The Judge having heard Solicitors on both sides ordered pleadings to be filed; order accordingly signed by Registrar.

June 30. W. Graham filed order for pleadings with minute of filing.

July 6. W. Graham filed petition with minute of filing.

Aug. 7. N. H. Meagher filed defence with minute of filing.

Aug. 26. The Marshal filed the order for sale of remainder of cargo.

Aug. 31. W. Graham filed reply to defence with minute of filing.

Sept. 1. W. Graham filed notice for hearing with minute of filing.

Sept. 7. Seven subpoenas on behalf of the plaintiff issued to Wallace Graham.

Sept. 10. W. Graham filed notice to produce & minute of filing.

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Sept. 15. W. Graham filed order taken by consent appointing W. W. McLellan stenographer, a Commissioner to take evidence in this cause with minute of filing.

Sept. 15. The Registrar served notice of trial herein for 28th Sept. inst. at 10 a. m. upon N. H. Meagher Solr. of defendant.

Sept. 16. Served similar notice of trial on W. Graham.

Sept. 16. Four subpoenas in blank issued to W. Graham.

Sept. 16. Two subpoenas issued to N. H. Meagher.

Sept. 17. Four subpoenas issued to N. H. Meagher.

Sept. 20. N. H. Meagher filed his own affidavit with exhibits and notice of motion for commission to take evidence with minute of filing.

Sept. 22. Chambers held at 11 a. m.; present W. Graham for Crown and N. H. Meagher for defts. Mr. Meagher read his own affidavit with exhibits and moved for commission to take evidence in U. States. Mr. Graham, contra, read affidavit of himself and of R. L. Borden. C. A. V. Judge took affidavits with him. Adjourned at 12.30;

Sept. 24. Chambers held at 12 noon; present W. Graham for Crown. The judge having heard Solicitors on both sides on 22nd inst., this day ordered that the Capt. of the *David J. Adams* be brought here for examination and that a commission do issue to take the evidence of the crew only in Boston with power to cross-examine *viva voce* as well as by cross-interrogatories. If the parties do not agree upon a commissioner, or upon the time when the commission shall be returnable, either party may apply to the judge to determine same.

Oct. 23. N. H. Meagher filed order for commission to take evidence with minute.

Nov. 3. N. H. Meagher filed his own affidavit made this day and demand for further particulars and affidavit of service with minute of filing.

Nov. 4. N. H. Meagher filed notice of motion for further particulars.

Oct. 30. A commission to take evidence of witnesses for the defendants in Boston addressed to Winslow Warren was issued to N. H. Meagher Solr. for defts.

Nov. 6. Chambers at 12.50 to hear Mr. Meagher's motion for further particulars; present R. L. Borden for Crown & N. H. Meagher for defendants. Mr. Meagher read his own affidavit and moved therefor; both counsel addressed the Judge at length. Judge took affidavits &c. relating thereto. C. A. V. Adjourned at 2.30 p. m.

Nov. 19. A subpoena on behalf of defendants was issued to N. H. Meagher.

Nov. 25. Commissioner to take evidence in Boston returned commission with evidence taken thereunder.

Nov. 29. One subpoena on behalf of plaintiff was issued to W. Graham.

Dec. 31. A subpoena on behalf of defendants was issued to N. H. Meagher.

May 19, 1887. N. H. Meagher filed notice to produce letters, telegrams &c. with minute.

June 2. 10.30 a. m. Trial: Present Wallace Graham for the Crown; N. H. Meagher for defendants. W. W. McLellan short hand Reporter sworn to take the evidence. Henry R. Lawrence Witness for defendant sworn and examined. Court adjourned at 1 o'clock to next day at 10 a. m.

June 3. 10 o'clock. Present W. Graham, R. L. Borden, and W. B. Ross for the Crown; N. H. Meagher and Edmund L. Newcombe for defendants, and Reporter W. W. McLellan. Capt. P. A. Scott Witness for the

Crown sworn, evidence taken by Judge. Reporter then absent was sent for. Papers put in evidence and numbered 1, 2, 3, 4, 5, & 6 by Judge. Mr. Graham commenced his argument about 10.30—at 1 o'clock adjourned for half an hour—resumed at 2 p. m. & sat until 4. Then adjourned to next day at 10 a. m.

June 4. Court opened at 10.30 a. m. Present Graham Ross & Borden for the Crown and N. H. Meagher for defendants, also W. W. McLellan Reporter. Mr. Graham concluded his argument in about ten minutes when Mr. Meagher commenced for the defence. At 1 o'clock adjourned for 45 minutes, resumed at 1.45 and sat until Mr. Meagher still arguing, then adjourned to Monday at 10 o'clock a. m.

June 6. Court opened at 10 o'clock a. m. Present W. Graham & R. L. Borden for Crown. N. H. Meagher for defa. Reporter W. W. McLellan entered at 10.25. Mr. Meagher resumed his argument and concluded at 10.50 a. m. when Mr. Borden commenced to reply and finished at 12 noon, when the Court adjourned *sine die*.

IN THE VICE-ADMIRALTY COURT OF NOVA SCOTIA.

HER MAJESTY THE QUEEN, PLAINTIFF, <i>against</i>	} No. 472.
THE SHIP OR VESSEL "DAVID J. ADAMS" AND her cargo. Action for forfeiture of said vessel and cargo, &c., &c.	

I Lewis W. DesBanes Registrar of said Court do hereby Certify that the foregoing paper writing is a true and correct transcript of the record of all the proceedings in said cause entered in the Minute Book of said Vice Admiralty Court.

Witness my hand seal of said Court at Halifax Nova Scotia this nineteenth day of October 1887.

[SEAL.]

L. W. DES BARRES,
Registrar.

(Indorsed:) Vice-Admiralty Court of Nova Scotia. Queen & Adams Memo. Trial.

IN THE VICE-ADMIRALTY COURT OF NOVA SCOTIA.

HER MAJESTY THE QUEEN, PLAINTIFF, <i>against</i>	} No. 473.
THE SHIP "ELLA M. DOUGHTY" AND HER CARGO. Action for forfeiture of the said vessel and her cargo &c. &c.	

May 20, 1886. A writ of summons was issued to Wallace Graham on behalf of the Attorney General of Canada against the ship *Ella M. Doughty* and her cargo in an action for violation of the convention of

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1818. Also for the forfeiture of said vessel and cargo for violation of sundry acts of the Dominion Parliament as above set forth.

May 20. Wallace Graham filed copy of summons.

May 28. W. Graham filed the affidavit of Lauchlin G. Campbell, to lead the warrant sworn 25th inst.

May 28. A warrant was issued to Wallace Graham on behalf of Her Majesty the Queen against the ship *Ella M. Doughty* and her cargo in an action for forfeiture of said vessel and cargo.

June 19. N. H. Meagher filed bond of John Lyle for \$240. The claim of Warren A. Doughty & others and affidavit of W. A. Doughty, consent of Wallace Graham to bail & release of ship &c., and the Bail Bond of John Lyle and H. A. Fuller in \$3000.00.

June 19. A Release of the ship & cargo was issued to N. H. Meagher.

June 23. The Marshal filed the warrant with affidavit of L. G. Campbell annexed.

June 24. N. H. Meagher filed appearance for Warren A. Doughty with minute of filing.

June 28. R. L. Borden filed his own affidavit with exhibit made this day and notice of motion for pleadings with minute of filing.

June 28. R. L. Borden filed original writ of summons.

June 29. At Chambers 12 o'clock noon. The Judge having heard Solicitors on both sides ordered pleadings to be filed—order accordingly signed by Registrar.

June 30. W. Graham filed order for pleadings with minute of filing.

July 6. W. Graham filed petition with minute of filing.

July 23. N. H. Meagher filed defence with minute of filing.

Sept. 6. N. H. Meagher filed notice for hearing with minute of filing.

Sept. 7. W. Graham filed Reply with minute of filing.

Nov. 3. N. H. Meagher filed his own affidavit made this day, and demand of further particulars, with affidavit of service and minute of filing.

Nov. 4. N. H. Meagher filed notice of motion for further particulars.

Nov. 6. Chambers held at 12.50 p. m to hear Mr. Meagher's notice of motion for further particulars—present R. L. Borden for plaintiff, N. H. Meagher for defendants. There being a similar notice of motion in the case against *David J. Adams*, one argument sufficed for both. *C. A. V.* Judge took N. H. Meagher's affidavit & notice of motion. Adjourned at 2.20 p. m.

Nov. 11. N. H. Meagher filed notice for hearing with minute of filing.

Mar. 5, 1887. The Registrar signed and sealed order for R. L. Borden to examine witnesses granted by consent.

Mar. 5. Ten subpoenas in blank issued to Wallace Graham.

May 19. N. H. Meagher filed notice to produce letters, telegrams &c. with minute.

June 2. Court opened at 10.30 a. m.—Trial Present W. Graham for the Crown and N. H. Meagher for defendants. W. W. McLellan, short hand Reporter, sworn to take evidence. The following witnesses on the part of defendants were sworn and examined and their evidence taken down by the Reporter, viz Warren A. Doughty, Henry R. Lawrence and Horace M. Sargent. Two papers put in evidence. Court adjourned at 1 p. m.

IN THE VICE-ADMIRALTY COURT OF NOVA SCOTIA.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP "ELLA M. DOUGHTY" AND } No. 473.
 her cargo. Action for forfeiture of the
 said vessel and her cargo, &c. &c.

I, Lewis W. DesBarres, Registrar of said Court, do hereby Certify that the foregoing paper writing is a true and correct transcript of the record of all the proceedings in above cause entered in the Minute Book of said Vice Admiralty Court.

Witness my hand and seal of said Court at Halifax Nova Scotia this nineteenth day of October 1887.

[SEAL.]

L. W. DES BARRES,
Registrar.

(Indorsed:) Vice-Admiralty Court of Nova Scotia. Queen v. *Doughty* Memo. Trial.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL DAVID J. ADAMS } No. 472.
 and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third, King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818, and for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third, King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of Parliament of the Dominion of Canada made and passed in the year 1868 and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870 and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

I, Peter A. Scott, of Halifax in the County of Halifax and Province of Nova Scotia, Fishery Officer of the Dominion of Canada, make oath and say as follows:

1. That the Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada, claims on behalf of Her Majesty the Queen to have the said ship or vessel *David J. Adams* and her cargo condemned to Her Majesty the Queen for violation of a certain convention between His late Majesty George the third, King of the United Kingdom of Great Britain and Ireland of the one part, and the

United States of America of the other part, made and signed at London in Great Britain on the twentieth day of October in the year of our Lord 1818 And also for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third, King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said Parliament made and passed in the said year, and being intituled "An Act to enable His Majesty to make regulations with respect to the taking and curing of fish in certain parts of the Coast of Newfoundland and Labrador and His said Majesty's other possessions in North America according to a convention made between His Majesty and the United States of America."

The said Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada also claims on behalf of Her Majesty the Queen to have the said ship *David J. Adams* and her cargo condemned as forfeited to Her Majesty the Queen for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and intituled "An Act respecting fishing by foreign vessels," and for violation of chapter fifteen of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1870, and intituled "An Act to amend the Act respecting fishing by foreign vessels," and for violation of chapter twenty three of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1871, and intituled "An Act further to amend the Act respecting fishing by foreign vessels."

The said ship *David J. Adams* is a foreign vessel, not navigated according to the laws of the United Kingdom of Great Britain and Ireland or of the Dominion of Canada and is registered in the United States of America, and is owned by foreigners residing in the said United States of America.

I further make oath and say that the aid of this Court is required to enforce the said claim.

I am a Fishery Officer on board of a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries.

P. A. SCOTT.

On the 13th day of May A. D. 1886 the said Peter A. Scott was duly sworn to the truth of this affidavit of Halifax in the County of Halifax.

Before me

L. W. DESBAREES,
Registrar.

(Indorsed :) V. Admiralty Court. Regina vs. *David J. Adams*. Affidavit of Peter A. Scott to lead warrant.
Filed 13 May 1886.

A correct copy.

L. W. DESBAREES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF, }
against }
 THE SHIP OR VESSEL DAVID J. ADAMS } No. 472.
 and her Cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818 And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of his late Majesty George the third King of the United Kingdom of Great Britain and Ireland being chapter thirty-eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty-one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868 and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870 and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871. Also for forfeiture of the said vessel and her cargo for violation of chapter twelve of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1883 and the Acts in amendment thereof.

I, Robert L. Borden of Halifax, in the County of Halifax, Barrister at Law, make oath and say as follows:

1. I am the partner in business of Wallace Graham Solicitor for the Attorney General of Canada in this cause.

2. Hereto annexed marked "A" is a true copy of the writ of summons in this cause which was issued on the tenth day of May instant and which was served on the twelfth day of May instant by Benjamin Van Blarcom, High Sheriff of the County of Digby. No appearance has yet been entered in this cause.

3. The Crown is not desirous of claiming or pressing for the condemnation of the said ship *David J. Adams* under the Customs Act 1883 in this action: and the claim to have the said ship or vessel condemned to Her Majesty in this action for violation of the Customs Act 1883 and the Acts in amendment thereof was inserted through misunderstanding instructions received by telegram.

3. The Crown is desirous of having the writ of summons amended herein by striking out of the title of the action and out of the indorsement on the said writ of summons of the nature of the plaintiff's claim, all such portions thereof as mention or relate to a claim, forfeiture or condemnation of the said ship *David J. Adams* and her cargo for violation of the Customs Act 1883 and acts in amendment thereof.

ROBERT L. BORDEN.

On the 13th day of May A. D. 1886, the said Robert L. Borden was duly sworn to the truth of this affidavit at Halifax, in the County of Halifax.
 Before me

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL DAVID J. ADAMS
 and her cargo. } No. 472.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871. Also for forfeiture of the said vessel and her cargo for violation of chapter twelve of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1883, and the Acts in amendment thereof.

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India.

To the owners and all others interested in the ship *David J. Adams* and her cargo.

We command you that within one week after the service of this writ exclusive of the day of such service you do cause an appearance to be entered for you in our Vice Admiralty Court of Halifax in the above named action and take notice that in default of your so doing the said action may proceed and judgment may be given in your absence.

Given at Halifax in our said Court under the seal thereof this tenth day of May A. D. 1886.

This writ may be served within six months from the date thereof exclusive of the day of such date but not afterwards.

The defendants may appear hereto by entering an appearance either personally or by Solicitor at the Registry of the said Court situate at number thirty five Bedford Row, in the City of Halifax and Province of Nova Scotia.

1. The Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada, claims on behalf of Her Majesty the Queen to have the ship *David J. Adams*, being a foreign ship or vessel not navigated according to the laws of the United Kingdom aforesaid or of Canada and registered in and owned by foreigners residing in the United States of America, and her cargo, condemned as forfeited to Her Majesty the Queen for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made and signed at London, in Great Britain, on the twentieth day of October in the year of Our Lord 1818, and also for violation

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ROBERT L BORDEN.

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 the County of Halifax,

Y. DES BARRES,

Registrar.

The said Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada also claims on behalf of Her Majesty the Queen to have the said ship *David J. Adams*, being a foreign ship or vessel as aforesaid, and her cargo, condemned as forfeited to Her Majesty the Queen for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and intituled "An Act respecting fishing by foreign vessels" and of chapter fifteen of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1870, and intituled "An Act to amend the Act respecting fishing by foreign vessels" and of chapter twenty three of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1871, intituled "An Act further to amend the Act respecting fishing by foreign vessels."

The said Honorable John S. D. Thompson, Her Majestys Attorney General for the Dominion of Canada also claims on behalf of Her Majesty the Queen to have the said ship *David J. Adams* and her cargo condemned as forfeited to Her Majesty the Queen for violation of chapter twelve of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1883, and untitled "The Customs Act 1883," and the Acts of the said Parliament of the Dominion of Canada in amendment thereof.

2. This writ was issued by Wallace Graham of 119 Hollis Street, in the City of Halifax and Province of Nova Scotia, Solicitor for the Attorney General of Canada.

3. All documents required to be served upon the Crown in this action may be left at 119 Hollis Street, in the City of Halifax and Province of Nova Scotia.

(Indorsed:) V. Admiralty Court. The Queen vs. *David J. Adams*.
Affidavit of R. L. Borden.

Filed 13 May 1886.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL DAVID J. ADAMS
 and her cargo. } No. 472.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King

of Great Britain
of the reign of His
Kingdom of Great
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s on behalf of Her
Adams and her cargo
for violation of chap-
Dominion of Canada
e Customs Act 1883,"
inion of Canada in

119 Hollis Street, in
solicitor for the Attor-

Crown in this action
ifax and Province of

rs. David J. Adams.

DES BARRÉS,
Registrar.

HALIFAX.

2.

argo for violation of
orge the third King

of the United Kingdom of Great Britain and Ireland of the one part
and the United States of America of the other part made on the twen-
tieth day of October 1818. And for violation of the Act of the Parlia-
ment of the United Kingdom of Great Britain and Ireland made and
passed in the fifty ninth year of the reign of His late Majesty George the
third King of the United Kingdom of Great Britain and Ireland being
chapter thirty eight of the Acts of the said last named Parliament made
and passed in the said year. Also for forfeiture of the said vessel and
her cargo for violation of chapter sixty one of the Acts of the Parlia-
ment of the Dominion of Canada made and passed in the year 1868, and
of chapter fifteen of the Acts of the said Parliament passed and made
in the year 1870, and of chapter twenty three of the Acts of the said
Parliament made and passed in the year 1871.

I, Benjamin Van Blarcom of Digby, in the County of Digby, and
Province of Nova Scotia High Sheriff of the said County of Digby
make oath and say as follows—

1. That I did on friday the fourteenth day of May A, D, 1886, duly
serve the original order to amend herein hereunto annexed marked A
upon the said ship or vessel *David J. Adams* and upon the cargo on
board of the said ship or vessel by attaching the said original order to
amend to the mainmast of the said ship or vessel *David J. Adams* for
a short time and by leaving a true copy of the said original order to
amend attached to the said mainmast of the said ship or vessel *David
J. Adams*.

BENJAMIN VAN BLARCOM,
High Sheriff.

On the 15th day of May A, D, 1886, at Digby, in the County of Digby,
the said Benjamin Van Blarcom was duly sworn to the truth of this af-
fidavit.

Before me

W. B. STEWART

A Commissioner to administer oaths in the Vice-Admiralty Court.

(Indorsed:) Filed 20 May 1886.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,	} No. 472.
<i>against</i>	
THE SHIP OR VESSEL "DAVID J. ADAMS" and her cargo.	

Action for forfeiture of the said vessel and her cargo for violation of a
certain convention between His late Majesty George the third King of
the United Kingdom of Great Britain and Ireland of the one part and
the United States of America of the other part made on the twentieth
day of October 1818. And for violation of the Act of the Parliament of the
United Kingdom of Great Britain and Ireland made and passed in the
fifty ninth year of the reign of His late Majesty George the third King of
the United Kingdom of Great Britain and Ireland being chapter thirty

eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871. Also for forfeiture of the said vessel and her cargo for violation of chapter twelve of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1883, and the Acts in Amendment thereof.

On the 13th day of May 1886, Before the Honorable James McDonald Judge.

Upon reading the writ of summons herein and the several endorsements thereon and the affidavit and certificate of Benjamin Van Blarcom of the service thereof and the affidavit of Robert L. Borden herein sworn the 13th day of May 1886, and upon hearing Mr. Borden on behalf of the Crown :

It is ordered that the writ of summons in this action be amended by striking out of the title of the action and immediately before the words "Victoria by the Grace of God" in the said writ of summons, the words "Also for forfeiture of the said vessel and her cargo for violation of chapter twelve of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1883, and the Acts in Amendment thereof". And also that the said writ of summons and the endorsement of claim or statement of the nature of the claim endorsed on the said writ of summons be amended by striking out of the said endorsement of claim or statement of the nature of the claim endorsed on said writ of summons the following words or paragraph at the end of the said endorsement of claim or statement of the nature of the claim indorsed on the said writ of summons namely "The said Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada, also claims on behalf of Her Majesty the Queen to have the said ship *David J. Adams* and her cargo condemned as forfeited to Her Majesty the Queen for violation of chapter twelve of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1883, and intituled the Customs Act 1883, and the Acts of the said Parliament of the Dominion of Canada in Amendment thereof."

And the said writ of summons and the several indorsements thereon and the said indorsement of claim or statement of the nature of the claim indorsed on the said writ of summons and all other proceedings in this cause are hereby amended accordingly.

L. W. DES BARRES,
Registrar.

This order was served by Benjamin Van Blarcom High Sheriff of the County of Digby upon the said ship *David J. Adams* and upon the cargo on board of said ship by attaching the said order for a short time to the mainmast of the said ship *David J. Adams* and by leaving a copy of the said original order attached to the said mainmast of the said ship *David J. Adams* on the 14th day of May A, D, 1886.

Digby 14th day of May A, D, 1886.

BENJAMIN VAN BLARCOM,
High Sheriff.

Filed 13 May, 1886.

L. W. DES BARRES,
Registrar.

Travel	10
record	10
service	70
return	1.00
affidavit and swearing	.70
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DES BARRES,
Registrar.

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AN BLARCOM,
High Sheriff.

Before me,

A Commissioner to administer oaths in the Vice-Admiralty Court.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF, }
against
 THE SHIP OR VESSEL DAVID J. ADAMS } No 472
 and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

I, Benjamin Van Blarcom of Digby, in the County of Digby and Province of Nova Scotia, High Sheriff of the said County of Digby, make oath and say as follows:

I That I did on Wednesday the 12th day of May 1886, duly serve the original writ of summons hereto annexed marked A before the same was amended upon the said ship or vessel *David J. Adams* and upon the cargo on board of the said ship or vessel *David J. Adams* by attaching the said original writ of summons before the same was amended, to the mainmast of the said ship or vessel *David J. Adams* for a short time and by leaving a true copy of the said original writ of summons before the same was amended, attached to the mainmast of the said ship or vessel *David J. Adams*.

BENJAMIN VAN BLARCOM.

On the 15th day of May A. D. 1886, at Digby, in the County of Digby, the said Benjamin Van Blarcom was duly sworn to the truth of this affidavit.

Before me,

W. B. STEWART,

A Commissioner to administer oaths in the Vice-Admiralty Court.

A.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF, }
against
 THE SHIP OR VESSEL DAVID J. ADAMS } No. 472
 and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part

HALIFAX.

472

for cargo for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the 59th year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

of Digby and Province of Digby, make oath

in 1886, duly serve the writ before the same. And upon the said J. Adams by attachment was amended, to the said Adams for a short time of summons before the said ship or

MIN VAN BLAROOM.

in the County of Digby, to the truth of this

B. STEWART,
Vice-Admiralty Court.

HALIFAX.

473

for cargo for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the 59th year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year and being intituled "An Act to enable His Majesty to make regulations with respect to the taking and curing of fish in certain parts of the coast of Newfoundland and Labrador and His said Majesty's other Possessions in North America according to a convention made between His Majesty and the United States of America."

and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the 59th year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

(On the margin in red ink:) [Amended on the 13th day of May 1886, in pursuance of the order granted herein on the said 13th day of May 1886.

L. W. DES BARRES,
Registrar.]

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India—

To the owners and all others interested in the ship *David J. Adams* and her cargo:

We command you that within one week after the service of this writ exclusive of the day of such service you do cause an appearance to be entered for you in our Vice Admiralty Court of Halifax in the above named action and take notice that in default of your so doing the said action may proceed and judgment may be given in your absence.

Given at Halifax in our said Court under the seal thereof this tenth day of May A. D. 1886.

This writ may be served within six months from the date thereof exclusive of the day of such date but not afterwards.

The defendants may appear hereto by entering an appearance either personally, or by Solicitor, at the Registry of the said Court situate at number thirty five Bedford Row in the City of Halifax and Province of Nova Scotia.

1 The Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada, claims on behalf of Her Majesty the Queen, to have the ship *David J. Adams*, being a foreign ship or vessel not navigated according to the laws of the United Kingdom aforesaid of Canada, and registered in and owned by foreigners residing in the United States of America, and her cargo condemned as forfeited to Her Majesty the Queen for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part, made and signed at London in Great Britain on the twentieth day of October in the year of Our Lord 1818, and also for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the 59th year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said Parliament made and passed in the said year and being intituled "An Act to enable His Majesty to make regulations with respect to the taking and curing of fish in certain parts of the coast of Newfoundland and Labrador and His said Majesty's other Possessions in North America according to a convention made between His Majesty and the United States of America."

The said Honorable John S. D. Thompson, Her Majesty's Attorney-General for the Dominion of Canada, also claims on behalf of Her Majesty the Queen to have the said ship *David J. Adams*, being a foreign ship or vessel as aforesaid and her cargo condemned as forfeited to Her Majesty the Queen for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and intituled "An Act respecting fishing by foreign vessels" and of chapter fifteen of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1870, and intituled "An Act to amend the Act respecting fishing by foreign vessels" and of chapter twenty-three of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1871, intituled "An Act further to amend the Act respecting fishing by foreign vessels."

(On the margin, in red ink:) [Amended on the 13th day of May 1886, in pursuance of the order granted herein on the said 13th day of May 1886.]

L. W. DES BARRES,
Registrar.

2. This writ was issued by Wallace Graham of 119 Hollis Street in the City of Halifax and Province of Nova Scotia, Solicitor for the Attorney General of Canada.

3. All documents required to be served upon the Crown in this action may be left at 119 Hollis Street in the City of Halifax and Province of Nova Scotia.

This writ was served by Benjamin Van Blarcom, High Sheriff of the County of Digby, by attaching the said original writ for a short time to the mainmast of the within named ship or vessel *David J. Adams* and by leaving a copy of the said original writ attached to the said mainmast of the said ship or vessel *David J. Adams* on Wednesday the twelfth day of May A. D. 1886.

BENJAMIN VAN BLARCOM,
High Sheriff of the County of Digby.

This amended writ of summons was served by Benjamin Van Blarcom, High Sheriff of the County of Digby upon the said ship *David J. Adams*, and upon the said cargo on board thereof by attaching the said original amended writ of summons for a short time to the mainmast of the said ship *David J. Adams* and by leaving a copy of the said original amended writ of summons attached to the said mainmast of the said ship or vessel *David J. Adams* on the fourteenth day of May A. D. 1886,

BENJAMIN VAN BLARCOM,
High Sheriff.

(Indorsed:) V. Admiralty Court. Queen vs. *David J. Adams*.
Amended writ of summons.

Filed 20 May 1886

A correct copy

L. W. DES BARRES
Registrar.

Fees	
Travel	.10
Entry	.10
Service	.70
Return	1.00
Swearing	.70
	2.60

B. VAN BLARCOM,
Sheriff.

IN THE VICE-ADMIRALTY COURT OF HALIFAX 1886.

HER MAJESTY THE QUEEN PLAINTIFF
against
 THE SHIP OR VESSEL DAVID J. ADAMS } No. 472
 and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

To Benjamin Van Blarcom of Digby, in the County of Digby, in the Province of Nova Scotia and Dominion of Canada, High Sheriff of the said County of Digby, Greeting :

These are to empower you and authorize you to act as my Deputy in the matter of the arrest and custody of the ship or vessel called the *David J. Adams*, under the warrant issued out of this Court in the above cause.

Given under my hand and seal at Halifax this 13th day of May A. D. 1886.

WILLIAM TWINING,
 Marshal of the Vice-Admiralty Court of Halifax, Nova Scotia.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL DAVID J. ADAMS } No. 472
 and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and

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Her Majesty's Attorney-
 on behalf of Her Maj-
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13th day of May 1886,
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. DES BARRES,
 Registrar.

19 Hollis Street in the
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 David J. Adams and
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VAN BLARCOM,
 the County of Digby.

Benjamin Van Blarcom,
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 said original amended
 of the said ship or ves-
 y A. D. 1886,

VAN BLARCOM,
 High Sheriff.

vs. *David J. Adams*.

. DES BARRES
 Registrar.

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R. VAN BLARCOM,
 Sheriff.

passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty-three of the Acts of the said Parliament made and passed in the year 1871.

I, Benjamin Van Blarcom of Digby, in the County of Digby, High Sheriff of the said County of Digby, make oath and say as follows:

1. That on Friday the 14th day of May A. D. 1886, I did, as the Deputy duly appointed of William Twining, Marshal of the Vice Admiralty Court of Halifax, duly serve the original warrant herein hereunto annexed marked A upon the said ship or vessel *David J. Adams* above named and upon the said cargo of the said vessel on board of the said ship or vessel *David J. Adams* by attaching the said original warrant to the mainmast of the said ship or vessel *David J. Adams* for a short time and by attaching and leaving attached to the said mainmast a true copy of the said original warrant.

2 That I am the deputy duly authorized in this behalf of the said William Twining, the Marshal of the Vice Admiralty Court of Halifax.

BENJAMIN VAN BLARCOM.

On the 15th day of May A. D. 1886, at Digby, in the County of Digby, the said Benjamin Van Blarcom was duly sworn to the truth of this affidavit.

Before me,

W. B. STEWART,

A Commissioner to administer oaths in the Vice-Admiralty Court.

A.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,	} No. 472.
against	
THE SHIP OR VESSEL "DAVID J. ADAMS" and her cargo.	

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

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d say as follows:

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IN VAN BLARCOM.

the County of Digby,
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B. STEWART,
ce-Admiralty Court.

HALIFAX.

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d in the year 1871.

Victoria by the Grace of God of the United Kingdom of Great Britain
and Ireland Queen, Defender of the faith, Empress of India. To the
Marshal of our Vice Admiralty Court of Halifax.

We hereby command you to arrest the ship or vessel *David J. Adams*
and her cargo and to keep the same under safe arrest until you shall
receive further orders from us.

Given at Halifax in the Province of Nova Scotia in our said Court
under the seal thereof this thirteenth day of May A. D. 1886.

"L. W. DES BARRES"
Registrar.

Warrant taken out by Wallace Graham, Solicitor for the Attorney
General of Canada.

This warrant was served by Benjamin Van Blarcom, High Sheriff of
the County of Digby, a Deputy of the Marshal of this Court duly ap-
pointed for that purpose, by affixing the said warrant for a short time
to the mainmast of the said ship or vessel called the *David J. Adams*
and leaving a copy of the same attached thereto on the fourteenth day
of May instant as will appear by the Certificate of the said Benjamin
Van Blarcom endorsed hereon.

Halifax, N. S. May 17, 1886.

WILLIAM TWINING,
Marshal of the Vice-Admiralty Court of Halifax, N. S.

This warrant was served by William Twining, Marshal of the Vice
Admiralty Court of Halifax, by the hands of Benjamin Van Blarcom,
High Sheriff of the County of Digby, acting as the Deputy duly ap-
pointed and authorized of the said William Twining, Marshal of the
Vice Admiralty Court of Halifax, on the within named ship or vessel
David J. Adams and upon the said cargo on board the said ship or ves-
sel *David J. Adams* by attaching the said original warrant for a short
time to the mainmast of the said ship or vessel *David J. Adams* and
by leaving a true copy of the said original warrant attached to the said
mainmast on Friday the 14th day of May A. D. 1886.

Digby, 14th day of May 1886.

BENJAMIN VAN BLARCOM,
High Sheriff.

(Indorsed:) V. Admiralty Court. No 472. Her Majesty the Queen
agst. the ship or vessel *David J. Adams* & her cargo. Warrant.
filed 18 May 1886.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL "DAVID J. ADAMS" } No 472.
 and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

I, Peter A. Scott of Halifax, in the County of Halifax and Province of Nova Scotia, fishery officer of the Dominion of Canada, make oath and say as follows:

1. That the above named ship or vessel *David J. Adams* and her cargo were on the seventh day of May 1886, seized by me for violation of the above named Acts and convention.

2. That I am a fishery officer on board of a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries and as such fishery officer I seized the said ship *David J. Adams* and her cargo as aforesaid in the Annapolis Basin, in the Province of Nova Scotia, within three marine miles of the shore of the Province of Nova Scotia, for the said violation of the said several acts and convention.

3. That since the said ship was seized by me as aforesaid this action has been commenced in this Honorable Court for the condemnation of the said vessel and her cargo for violation of the said above named acts and convention. The writ of summons herein was issued on the 10th day of May instant. A warrant in this action for the arrest of the said vessel and her cargo has been issued this day but the same has not yet been served and I am informed and do verily believe that it is the intention of the Crown to have the said vessel and her cargo arrested forthwith under the said warrant issued this day.

4. The cargo of the said vessel consists wholly or almost wholly of a quantity of fresh herring and a quantity of fresh halibut. The said halibut are not kept on ice and are rapidly deteriorating and spoiling and it is absolutely necessary to prevent the same from being wholly lost that they should be sold at once as in a few days they will be in a very bad and unsaleable condition as I verily believe. The said herrings are kept on ice as I am informed and do verily believe and are not deteriorating so rapidly as the said halibut, but I verily believe that the same are deteriorating to some extent and that loss and damage will be saved if the said herring are also sold forthwith.

5. The said vessel *David J. Adams* and her said cargo which is on board of the said vessel are now in the Annapolis Basin and at or near Digby, in the County of Digby and Province of Nova Scotia.

6. I believe that it is in the interest of all parties concerned that the said cargo of the said vessel *David J. Adams* should be sold and disposed of without delay.

P. A. SCOTT.

On the 13th day of May A. D. 1886, the said Peter A. Scott was duly sworn to the truth of this affidavit at Halifax, in the County of Halifax.

Before me,

L. W. DES BARRES,
Registrar.

(Indorsed:) V. Admiralty Court. Regina vs *David J. Adams*. Affidavit of Peter A. Scott for sale of cargo. filed 20 May 1886.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS" and her cargo. } No. 472.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of his late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty-eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty-one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty-three of the Acts of the said Parliament made and passed in the year 1871.

I, Robert L. Borden, of Halifax, in the County of Halifax, Barrister at Law, make oath and say as follows:

1. I am a partner in business of the Solicitor for the Attorney General of Canada in this cause.

2. On the 13th day of May instant a warrant was duly issued out of this Honorable Court for the arrest of the said ship or vessel *David J. Adams* and her cargo.

3. The said warrant was, as I verily believe, duly served upon the said ship or vessel *David J. Adams* and her cargo on Friday the 14th day of May instant by Benjamin Van Blarcom, Sheriff of the County of Digby,

acting in that behalf as the duly authorized deputy of William Twining Marshal of the Vice Admiralty Court of Halifax.

4. This morning I received the telegram hereunto annexed marked A from Wallace Graham, Esquire, the Solicitor of the Attorney General of Canada in this cause. The said Wallace Graham left for Digby on Friday morning for the purpose, among other things, of instructing the said Sheriff as to said arrest and he arranged with me before he left Halifax for Digby as aforesaid, that he would telegraph to me when the said vessel and her cargo had been arrested in order that I might apply necessary for an order or commission to have the cargo or the perishable portion thereof sold. The said vessel and the said cargo are now as verily believe under the arrest of this Court under the said warrant issued herein on the 13th day of May instant—copy of which said warrant is hereto annexed marked B. I beg leave to refer to the writ of summons affidavits and papers on file herein—

5. I verily believe that the fifteen hundred pounds of halibut or thereabouts, and the fifteen barrels of bait mentioned in the said telegram require to be sold immediately, and that the said halibut and bait are deteriorating in value, and I further say that I verily believe the said halibut and bait are of small value.

On the 15th day of May 1886, the said Robert L. Borden was duly sworn to the truth of this affidavit at Halifax, in this County of Halifax.

ROBERT. L. BORDEN.

Before me,

L. W. DES BARRES.
Registrar.

A.

Dated, Digby, N. S. 15 MAY 1886
To R S BORDEN

Hlsr.

Warrant served yesterday not over fifteen hundred pounds halibut and fifteen barrels bait all rec'd unsalted and of little value—require immediate sale—rest will keep for present.

WALLACE GRAHAM.

B

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,	} No. 472.
<i>against</i>	
THE SHIP OR VESSEL DAVID J. ADAMS and her cargo.	

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland being chapter thirty-eight of the Acts of the said last named Parli-

uty of William Twining,
 unto annexed marked A,
 the Attorney General of
 n left for Digby on Friday
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ert L. Borden was duly
 n this County of Halifax.
 ROBERT. L. BORDEN.

W. DES BARRES.
Registrar.

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WALLACE GRAHAM.

OF HALIFAX.

o. 472.

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ent made and passed in the said year. Also for forfeiture of the said
 vessel and her cargo for violation of chapter sixty-one of the Acts of
 the Parliament of the Dominion of Canada made and passed in the
 year 1868, and of chapter fifteen of the acts of the said Parliament
 passed and made in the year 1870, and of chapter twenty-three of the
 acts of the said Parliament made and passed in the year 1871.

Victoria by the Grace of God of the United Kingdom of Great Britain
 and Ireland Queen, Defender of the Faith, Empress of India. To the
 Marshal of our Vice Admiralty Court of Halifax.

We hereby command you to arrest the ship or vessel *David J. Adams*
 and her cargo and to keep the same under safe arrest until you shall
 receive further orders from us.

Given at Halifax, in the Province of Nova Scotia, in our said Court
 under the seal thereof this thirteenth day of May A, D, 1886.

L. W. DES BARRES,
Registrar.

Warrant taken out by Wallace Graham, Solicitor for the Attorney
 General of Canada.

(Indorsed:) Vice-Admiralty Court. Regina vs *David J. Adams*.
 Affidavit of R. L. Borden for sale of cargo.
 filed 20 May 1886.

A correct copy,

L. W. DES BARRES,
Registrar,

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL "DAVID J. ADAMS"
 and her cargo. } No. 472.

Action for forfeiture of the said vessel and her cargo for violation
 of a certain convention between His late Majesty George the third
 King of the United Kingdom of Great Britain and Ireland of the one
 part and the United States of America of the other part made on the
 twentieth day of October 1818. And for violation of the Act of the
 Parliament of the United Kingdom of Great Britain and Ireland made
 and passed in the fifty ninth year of the reign of His late Majesty
 George the third King of the United Kingdom of Great Britain and
 Ireland, being chapter thirty eight of the Acts of the said last named
 Parliament made and passed in the said year. Also for forfeiture of
 the said vessel and her cargo for violation of chapter sixty one of the
 Acts of the Parliament of the Dominion of Canada made and passed in
 the year 1868, and of chapter fifteen of the Acts of the said Parliament
 passed and made in the year 1870, and of chapter twenty three of the
 Acts of the said Parliament made and passed in the year 1871.

I, Robert L. Borden of Halifax, in the County of Halifax, Barrister at
 Law, make oath and say as follows:

I am a partner in business of Wallace Graham, solicitor of the At-
 torney General of Canada, in this cause.

2. That as I am informed, and do verily believe, the remainder of the cargo of the said ship or vessel *David J. Adams* is perishable and is deteriorating in value. The said cargo consists, as I verily believe and as I am informed, of salted or corned fish and of ships stores such as pork and other articles of food.

3. I produce and annex hereto marked "A" a true copy of a letter received this day by the said Wallace Graham from the Sheriff of the County of Digby, in whose custody the said ship or vessel and her cargo are at present.

4. I verily believe that loss and damage will be sustained unless the said cargo be sold forthwith and I believe it will be for the benefit of all persons concerned or interested that the said cargo should be so sold forthwith.

ROBERT L. BORDEN.

On the 22d day of May A. D. 1886, the said Robert L. Borden was duly sworn to the truth of this affidavit at Halifax, in the County of Halifax, before me,

BRENTON H. EATON
Deputy Registrar.

A

DIGBY, May 21, 1886.

WALLACE GRAHAM, Esq.,

DEAR SIR. I attended to the posting of the handbills for the sale of fresh fish on board of schr. *David J. Adams*; could get no bidder the fish being completely spoilt so much so that I was forthwith notified by the Health Wardens to remove the nuisance at once and cleanse the vessel or they would do so at once on my expense which, of course, I had to obey. I send returns to-morrow.

B. VAN BLARCOM

Shall I resalt the corned fish to prevent them from spoiling?

B V B

(Indorsed:) V. Admiralty Court. 2nd sale. Regina vs *David J. Adams*. Affidavit of R. L. Borden.

Copy of within was served on Messrs Meagher, Drysdale & Newcombe, on May 22d 1886.

WALLACE GRAHAM
Solr. for Atty. General of Canada.

Filed 28 June 1886.

A correct copy.

L. W. DES BARRÉS,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS" } No 472.
and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part

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, May 21, 1886.

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VAN BLARCOM

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BARRES,
Registrar.

IFAX.

for violation of
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and the United States of America of the other part made on the twentieth day of October 1818. Also for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

I, Benjamin Van Blarcom, High Sheriff of the County of Digby, the duly authorised deputy of William Twining, Marshal of the Vice Admiralty Court of Halifax, to execute and carry out the order of sale herein given and dated the fifteenth day of May A. D. 1886, do hereby return to the said order of sale and certify that I caused the said fish and bait to be advertised by handbills posted up in the Town of Digby and in other public places adjacent to the place of sale and in the town of Annapolis Royal for a period of more than 48 hours before the day of the sale hereinafter mentioned. I annex hereto a copy of the said hand bills.

That on the twentieth day of May 1886, at the Court House in the Town of Digby aforesaid, being the time and place mentioned in the said hand bills I put up the said fish and bait at public Auction and after the same had been exposed for sale for some time they were knocked down to _____ for the sum of _____; could not get any offer as the said fish was in a decomposed condition. _____, he being the highest and best bidder therefor. That in pursuance of the said order of sale I have paid the proceeds of the said sale which amount to the sum of _____ into the hands of the Registrar of this Honorable Court.

In Witness whereof, I have hereunto my hand subscribed and set this 21st day of May A. D. 1886,

BENJAMIN VAN BLARCOM

A Deputy Marshal of the Vice Admiralty Court of Halifax.

IN THE VICE-ADMIRALTY COURT OF HALIFAX

HER MAJESTY THE QUEEN, PLAINTIFF,
against,
THE SHIP OR VESSEL "DAVID J. ADAMS" } No 472.
and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her

I, William Twining, of Halifax, in the County of Halifax, Marshal of the Vice Admiralty Court of Halifax, do hereby nominate constitute and appoint you my deputy to execute and carry out the order made in this cause on the 15th day of May 1886, for the sale of a portion of the cargo of the said ship or vessel *David J. Adams* and to sell the said portion of said cargo in the manner thereby directed and to do all things and perform all acts necessary or expedient in that behalf or required to be done by the terms of said order as validly and effectually as I could do the same if personally present—

WILLIAM TWINING
Marshal Vice Admiralty Court of Halifax N. S.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL DAVID J. ADAMS
 and her cargo. } No 472.

On the 14th day of May 1886 before the Honorable James McDonald,
Judge

Upon reading the two affidavits of Robert L. Borden, sworn herein the 15th day of May 1886, and the exhibits thereto annexed. The affidavit of Peter A. Scott, sworn herein the 13th day of May 1886, the writ of summons and papers on file herein, the notice of motion herein and affidavit of service thereof and upon hearing Counsel for the Crown—

Acts of the Parliament
the year 1868, and of
t passed and made in
Acts of the said Par-

County of Digby, High
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of Halifax, Marshal of
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LIAM TWINING
Court of Halifax N. S.

HALIFAX

472.

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late Majesty George
Britain and Ireland,
last named Parlia-
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d Parliament passed
three of the Acts of
871.

e James McDonald,

orden, sworn herein
annexed. The affi-
f May 1886, the writ
motion herein and
el for the Crown—

is ordered that the following portion of the cargo of the said ship
essel *David J. Adams* namely—A lot of fresh unsalted halibut being
at fifteen hundred pounds or thereabouts in weight and fifteen bar-
of fresh unsalted bait or herring be sold forthwith by the Marshal
his Court, or his Deputy, at Public Auction at or near Digby in the
County of Digby it having been made to appear to the Court that the
property is deteriorating in value and is of small value. It is fur-
ordered that the said property be sold without a Commission of
being issued. And it is further ordered that the said property be
by the said Marshal, or his Deputy, forthwith at Public Auction
er forty eight hours notice by handbills posted up in the Town of
gby and other public places adjacent to the place of sale. It is fur-
ordered that as soon as possible after the said sale the said Mar-
l or his Deputy shall pay into the Registry of this Court the gross
ceeds of the said sale and shall file this order in the said Registry
h a return of the manner in which it has been executed.
It is further ordered that handbills giving notice of the said sale and
the time and place thereof shall be posted up in the Town of Annap-
s Royal not less than 48 hours before the time of said sale.

JAMES McDONALD.

Judge.

L. W. DES BARRES

Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS"
and her cargo. } No. 472.

I, Benjamin Van Blarcom, High Sheriff of the County of Digby, the
only authorized deputy of William Twining, Marshal of the Vice Ad-
miralty Court of Halifax, to execute and carry out the order of sale
herein given and dated the 15th day of May A. D. 1886, do hereby re-
turn to the said order of sale and certify that I caused the said fish and
bait to be advertised by hand bills posted up in the Town of Digby and
other public places adjacent to the place of sale and in the Town of
Annapolis Royal for a period of more than 48 hours before the day of
the sale hereinafter mentioned. I annex hereto a copy of the said
handbills. That on Thursday, the 20th day of May A. D. 1886, at the
Court House in the Town of Digby aforesaid, being the time and place
mentioned in the said handbills, I put up the said fish and bait at public
Auction and after the same had been exposed for sale for some time in
the presence of about twelve persons could not get any offer for said
fish and bait as they were in a decomposed condition and immediately
after exposing said fish and bait for sale I was served by Health War-
dens with a notice to remove them, a copy of said notice is hereto an-
nexed. In obedience to said notice I caused said fish and bait to be
removed and the vessel cleansed.

In Witness whereof, I have hereunto my hand subscribed and set this
21st day of May A. D. 1886,

BENJAMIN VAN BLARCOM

A Deputy Marshal of the Vice Admiralty Court of Halifax.

DIGBY, May 20th 1886

B. VAN BLARCOM, Esq.,
High Sheriff.

DEAR SIR: I have to notify you that the smell for the contents of the scho'r. *David J. Adams* now lying at the wharf is something dreadful. Complaints have been made to us about it. I am instructed to say you must at once remove all offensive materials from said scho'r. otherwise we will have to have the same removed and the vessel cleared and at your expense. This must be done at once. You will see this is attended to.

I am yours &c.,

A. J. S. COPP,
Secy. Health Warden

The execution of this order appears by the annexed certificate & return of Benjamin Van Blarcom, High Sheriff of the County of Digby. Deputy of the Marshal of this Court *pro hac vice*, dated the 21st day of May A. D. 1886,

WILLIAM TWINING,
Marshal Vice Admiralty Court of Halifax N. S.

HALIFAX, N. S. MAY 25, 1886,

HANDBILL.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS"
and her cargo. } No 472.

To be sold at Public Auction by the undersigned at the Court House in Digby, in the County of Digby, on thursday the 20th day of May A. D. 1886, at five o'clock in the afternoon, pursuant to an order of the Judge of the said Court made herein the 15th day of May A. D. 1886, the following lots of Fish and Bait forming part of the cargo of the Schooner *David J. Adams* now held in the custody of the said Court under a Warrant thereof in the above named action, viz:

A Lot of Fresh unsalted halibut about fifteen hundred pounds weight.

Also 15 bbls. Fresh Bait or herring.

The above must be sold on the day named unreservedly and for cash.

BENJAMIN VAN BLARCOM,
A Deputy Marshal of the Vice Admiralty Court of Halifax
DIGBY, 17 May 1886.

(Indorsed:) V. Admiralty Court. No 472. Regina vs *David J. Adams*. Order for sale of a portion of cargo. returns &c.
Filed 27 May 1886.

A true copy.

L. W. DES BARRES
Registrar

DIGBY, May 20th 1886

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS" } No. 472.
and her cargo.

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A. J. S. COPP,
Secty. Health Wardens.
e annexed certificate & n
of the County of Digby,
vice, dated the 21st day

WILLIAM TWINING,
y Court of Halifax N. S.

OF HALIFAX.

No 472.

igned at the Court House
y the 20th day of May A
uant to an order of the
ay of May A. D. 1886, the
the cargo of the Schooner
e said Court under a War

teen hundred pounds in

reservedly and for cash
N VAN BLAROOM.
ralty Court of Halifax.

2. Regina vs David J.
eturns &c.

W. DES BARRES
Registrar.

action for forfeiture of the said vessel and her cargo for violation of
ertain convention between His late Majesty George the third King
he United Kingdom of Great Britain and Ireland of the one part
the United States of America of the other part made on the twen-
h day of October 1818. And for violation of the Act of the Parlia-
nt of the United Kingdom of Great Britain and Ireland made and
sed in the fifty ninth year of the reign of His late Majesty George the
ri King of the United Kingdom of Great Britain and Ireland, being
apter thirty eight of the Acts of the said last named Parliament
de and passed in the said year. Also for forfeiture of the said vessel
d her cargo for violation of chapter sixty one of the Acts of the Par-
ment of the Dominion of Canada made and passed in the year 1868,
d of chapter fifteen of the Acts of the said Parliament passed and
de in the year 1870, and of chapter twenty three of the Acts of the
d Parliament made and passed in the year 1871.

I, Robert L. Borden of Halifax, in the County of Halifax, Barrister at
y make oath and say as follows:

1. I am a partner in business of the Solicitor of the Attorney General
Canada in this cause.

2. This is an action brought by Her Majesty for the forfeiture of the said
essel and her cargo. Annexed hereto marked A is a true copy of the
rit of summons herein and indorsements thereon—the writ of sum-
ons was issued on the tenth day of May A. D. 1886, and was duly
rved on the said ship and cargo, and the said vessel and her cargo
ve been duly arrested under a warrant issued out of this Honorable
ourt in this action. I beg leave to refer to the original writ of sum-
ons and to the original warrant on file herein, and to the returns
ereto, and to the papers on file in this cause in the office of the Reg-
trar at Halifax.

3. N. H. Meagher Esquire, Q. C. has appeared for Jesse Lewis herein
n the tenth day of June A. D. 1886.

4. It is desirable, as I am instructed and do verily believe, that there
ould be pleadings in this action and I believe that by means thereof
is action can be more conveniently tried and that a saving of expense
ill thereby be effected. That unless pleadings are ordered herein the
ssues of fact will be of an exceedingly general nature so that it will
e almost or quite impossible for either party to have any idea except
y surmise of what specific questions of fact are really in dispute
erein.

5. That on account of the absence of the Honorable the Chief Justice
n circuit I have been unable to make this motion at an earlier date.

ROBERT L. BORDEN.

On the 28th day of June A. D. 1886, the said Robert L. Borden was
uly sworn to the truth of this affidavit at Halifax, in the County of
Halifax.

Before me.

L W. DES BARRES.
Registrar.

(Indorsed :) V. Admiralty Court. 472 *The Queen vs. David J.*
ams. Aff'y't of R. L. Borden.
 Filed 28 June 1886

I certify that a true copy of the within affidavit was served on Solicitor of the defendant before 12 o'clock, noon on 28 June 1886.

WALLACE GRAHAM,
Sofr. of Att'y. General of Canada

A correct copy.

L. W. DES BARRES,
Registrar

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL "DAVID J. ADAMS"
 and her cargo. } No. 472.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between his late Majesty George the third of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1812. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, chapter thirty-eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty-one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty-three of the Acts of the said Parliament made and passed in the year 1871.

I Robert L. Borden, of Halifax, in the County of Halifax, Barrister at Law, do hereby make oath and say as follows:

1. I am a partner in business of the Solicitor for the Attorney
 eral of Canada in this cause.

2. That yesterday Mr. N. H. Meagher, Q. C. informed me that he probably appear for the owners of the above named vessel and on this morning I waited upon Mr. Meagher with a view of obtaining order for the sale of a portion of the cargo of the said vessel, where Meagher informed me that it was not certain that he would appear herein as there had been some misunderstanding. This afternoon I caused to be served upon Mr. Meagher at about half past three o'clock the notice of motion annexed to the affidavit of James M. Power, sworn this day. I again saw Mr. Meagher and he and I called upon some persons familiar with the value of fish and were informed that halibut on board the said vessel would not be worth more

affidavit as annexed marked
mons and the same as a
15th day of May 1886.
L. W. DES BARRES
Registrar

The Queen vs. David J. Adams

affidavit was served on the
noon on 28 June 1886,
WALLACE GRAHAM,
Att'y. General of Canada,
L. W. DES BARRES,
Registrar.

COURT OF HALIFAX

No. 472.

and her cargo for violation of
Majesty George the third King
and Ireland of the one part
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of His late Majesty George
eat Britain and Ireland, being
aid last named Parliament
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acts of the said Parliament
of chapter twenty-three of
passed in the year 1871.
nty of Halifax, Barrister at
itor for the Attorney Gen.

. informed me that he would
ve named vessel and cargo.
with a view of obtaining an
of the said vessel, when Mr.
ain that he would appear
anding. This afternoon I
out half past three o'clock
of James M. Power, herein
and he and I called upon
sh and were informed by
uld not be worth more than

ree or four cents per pound and that the bait on board the said vessel
ould not be worth more than two dollars per barrel. Mr. Meagher
en informed me that he would not appear at the time mentioned in
id notice but that he would have no objection to an order passing for
e sale of the said fifteen hundred pounds or thereabouts of halibut
d the said fifteen barrels of bait and that it was probable altho' not
ertain that he would appear in this cause for the owners of the vessel
d cargo.

3. No appearance has yet been entered herein.

ROBERT L. BORDEN.

On the 15th day of May 1886, the said Robert L. Borden was duly
vorn to the truth of this affidavit at Halifax, in the County of Hal-
x.

Before me.

L. W. DES BARRES,
Registrar.

(Indorsed:) V. Admiralty Court. Regina vs David J. Adams. Sec-
ond affid't. of R. L. Borden for sale of cargo.
filed 28 June 1886.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS" } No. 472.
and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of
a certain convention between His late Majesty George the third King
of the United Kingdom of Great Britain and Ireland of the one part
and the United States of America on the other part made on the twen-
leth day of October 1818. And for violation of the Act of the Parliament
of the United Kingdom of Great Britain and Ireland made and passed
in the fifty-ninth year of the reign of His late Majesty George the third
King of the United Kingdom of Great Britain and Ireland, being chapter
thirty-eight of the Acts of the said last-named Parliament made and
passed in the said year. Also for forfeiture of the said vessel and her
cargo for violation of chapter sixty-one of the Acts of the Parliament of
the Dominion of Canada made and passed in the year 1868, and of
chapter fifteen of the Acts of the said Parliament passed and made in
the year 1870, and of chapter twenty-three of the Acts of the said Par-
liament made and passed in the year 1871.

Take notice that on Tuesday the 29th day of June A. D. 1886, at 12
o'clock noon, at the County Court House Halifax, the plaintiff will by
Counsel move the Judge in Chambers to order that the parties hereto
do file and serve pleadings herein in the manner and at the times pro-
vided by the rules respecting procedure when an order is made for
pleadings.

WALLACE GRAHAM,
Solicitor of the Attorney General of Canada.

(Indorsed :) V. Admiralty Court. 472. The Queen vs David J. Adams. Notice of motion.
filed 28 June 1886.

I Certify that a true copy of this notice was served on the Solicitor of the defendant before 12 o'clk. noon on the 28th June 1886.

WALLACE GRAHAM,
Solicitor of Attorney General of Canada.

▲ true copy.

L. W. DES BARRES,
Registrar.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL DAVID J. ADAMS
 and her cargo. } No. 472.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

On the 29th day of June 1886, Before the Honorable James McDonald
Judge:

Upon hearing Counsel for the plaintiff and for the defendant and upon reading the affidavit of Robert L. Borden, filed herein on the twenty eighth day of June 1886 and the notice of motion filed herein on the 28th day of June 1886, and the affidavit of James M. Power of the service and filing thereof.

It is ordered that this action be heard with pleadings and that the parties hereto do file and serve pleadings herein in the manner and at

the times prescribed in such case by the rules and practice of this Honorable Court and that the costs of this application be costs in the cause

L. W. DES BARRES,
Registrar.

(Indorsed:) V. Admiralty Court. The Queen *vs* David J. Adams.
Order for pleadings.
filed 30 June 1886.

I Certify that a true copy of the within order was served upon N. H. Meagher, Esq. on the 30 day of June 1886.

WALLACE GRAHAM,
Solicitor for the Atty. General of Canada.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID I. ADAMS"
and her cargo. } No. 472.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty-eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of said Parliament passed and made in the year 1870, and of chapter twenty-three of the Acts of the said Parliament made and passed in the year 1871.

Writ issued on the 10th day of May 1886.

1. A certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland and the United States of America was made and signed at London on the 20th day of October 1818, and by the first article thereof after reciting that differences had arisen respecting the liberty claimed by the said United States for the inhabitants thereof to take, dry and cure fish on certain coasts, bays, harbors and creeks of His Britannic Majesty's Dominions in America it was agreed between the High contracting parties that the inhabitants of the said United States should have forever in common with the subjects of His Britannic Majesty the liberty to take fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands on the western and northern coasts of Newfoundland from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands, and also on the coasts, bays, harbors and creeks from

Mount Joly on the Southern coast of Labrador to and through the Straits of Belle Isle and thence northwardly indefinitely along the coast without prejudice however to any of the exclusive rights of the Hudson's Bay Company: and that the American fishermen should also have liberty forever to dry and cure fish in any of the unsettled bays, harbors and creeks of the Southern part of the coast of Newfoundland thereabove described and of the coast of Labrador; but as soon as the same or any portion thereof should be settled it should not be lawful for the said fishermen to dry and cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground. And the said United States thereby renounce forever any liberty theretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbors of his Majesty's Dominions in America not included within the above mentioned limits: Provided, however, that the American fishermen should be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water and for no other purpose whatever. But they should be under such restrictions as might be necessary to prevent their taking, drying or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them.

2. That a certain Act of the Parliament of the United Kingdom of Great Britain and Ireland was made and passed in the fifty-ninth year of the reign of His said late Majesty King George the third, being chapter 38 of the Acts of the said Parliament made and passed in the fifty-ninth year of the reign of His said late Majesty King George the third and being intituled "An Act to enable His Majesty to make regulations with respect to the taking and curing of fish on certain parts of the coasts of Newfoundland, Labrador and His Majesty's other possessions in North America according to a convention made between His Majesty and the United States of America."

3. That on the 20th day of March A. D. 1867, a certain other Act of the Parliament of the United Kingdom of Great Britain and Ireland was made and passed, being chapter three of the Acts of the said Parliament passed in the thirty and thirty-first years of the reign of Her present Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland and being intituled "An act for the union of Canada, Nova Scotia and New Brunswick and the Government thereof and for purposes connected therewith," which said Act is cited and known as the British North America Act "1867."

4. That a certain Act of the Parliament of Canada was made and passed in the thirty-first year of the reign of Her said Majesty Queen Victoria, being chapter 61 of the Acts of the said Parliament made and passed in the year 1868, and being intituled "An Act respecting fishing by foreign vessels." And a certain other Act of the Parliament of Canada was made and passed in the thirty-third year of the reign of Her said Majesty Queen Victoria, being chapter 15 of the Acts of the said Parliament made and passed in the year 1870, and being intituled "An Act to amend the Act respecting fishing by foreign vessels." And in the thirty-fourth year of the reign of Her said Majesty Queen Victoria a certain other Act of the said Parliament of Canada was made and passed, being chapter 23 of the Acts of the said Parliament made and passed in the year 1871, and being intituled "An act further to amend the Act respecting fishing by foreign vessels."

5. That the said convention and the said several acts hereinbefore mentioned were and are still in full force and effect.

and through the Straits along the coast without of the Hudson's Bay should also have liberty to settle bays, harbors and Newfoundland thereabove upon as the same or any be lawful for the said settled without pre- vants, proprietors or pos- ates thereby renounce ed by the inhabitants ee marine miles of any Majesty's Dominions in limits: Provided, how- tted to enter such bays iring damages therein, no other purpose what- as might be necessary therein or in any other reserved to them.

the United Kingdom of in the fifty-ninth year e the third, being chap- and passed in the fifty- King George the third ty to make regulations on certain parts of the Majesty's other possessions e between His Majesty

a certain other Act of Britain and Ireland Acts of the said Parlia- of the reign of Her pres- dom of Great Britain nion of Canada, Nova thereof and for pur- ed and known as the

Canada was made and said Majesty Queen Parliament made and Act respecting fishing the Parliament of Can- of the reign of Her the Acts of the said being intituled "An gn vessels." And in Majesty Queen Victoria a was made and passed, ent made and passed er to amend the Act

al acts hereinbefore

6. The Annapolis Basin lying in and between the counties of Digby and Annapolis in the Province of Nova Scotia, together with its outlet the Bay of Fundy, Digby Gut, all hereinafter designated as the "Annapolis Basin" is a portion of the Dominions in America formerly of the late Majesty George the third King of the United Kingdom of Great Britain and Ireland and now of Her Majesty Queen Victoria Queen of the United Kingdom of Great Britain and Ireland not included or lying that part of the Southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands on the western and northern coasts of Newfoundland from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands or on the coasts, bays, harbors and creeks from Mount Joly on the Southern coast of Labrador to and through the Straits of Belle Isle and thence northwardly indefinitely along the coast.

7. That the said ship *David J. Adams*, whereof one Aldon Kinney who was not a natural born subject of Her Majesty, was or is Master, is a foreign ship or vessel not navigated according to the laws of the United Kingdom of Great Britain and Ireland or according to the laws of Canada but was and is a ship of the United States of America owned by foreigners, that is to say by persons residing in and being citizens of the United States of America where the said ship or vessel was built and enrolled and the said ship or vessel *David J. Adams* was at the time hereinafter mentioned licensed and permitted to carry on the fisheries but not to trade under and in pursuance of the Acts of the United States of America and was engaged in the prosecution of the fisheries and on a fishing voyage and without a permit to engage in trade and was and is without a license to fish or any license whatsoever in that behalf from the Government of Canada or of Nova Scotia under the statutes of Canada or of Nova Scotia in that behalf.

8. On or about the 6th day of May 1886, the said Aldon Kinney the Master of the said ship or vessel *David J. Adams* and the officers and crew of the said ship or vessel *David J. Adams*, did, in and with the said ship or vessel *David J. Adams*, enter into the Annapolis Basin aforesaid within three marine miles of the shores of the said Annapolis Basin and within three marine miles of the coasts, bays, creeks and harbors of those portions of the Dominions in America of His said late Majesty King George the third being now the Dominions in America of Her Majesty Queen Victoria not included within the limits specified and defined in the said first article of the said convention and set out and recited in the first paragraph hereof for the purpose of procuring bait, that is to say, herrings wherewith to fish, and ice for the preservation on board said vessel of bait to be used in fishing and of fresh fish to be fished for, taken and caught by and upon the said vessel and by the master, officers and crew thereof and did procure such bait wherewith to fish and such ice for the purposes aforesaid and did so enter for other purposes than the purpose of shelter or repairing damages or of purchasing wood or of obtaining water contrary to the provisions of the said convention and of the said several Acts and the said vessel *David J. Adams* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said Annapolis Basin by Peter A. Scott, a fishery officer on board of the steamship *Lansdowne*, a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries, as being liable to forfeiture for breach or violation of the said convention and of the said several acts.

9. The said Aldon Kinney, the Master of the said ship or vessel *David J. Adams*, and the officers and crew of the said ship or vessel *David J. Adams*, did, on or about the said 6th day of May 1886, and subsequently in the said ship or vessel *David J. Adams*, in the Annapolis Basin aforesaid, and while he and they and the said ship or vessel *David J. Adams* were within three marine miles of the coasts or shores of the said Annapolis Basin and within three marine miles of the coasts, bays, creeks and harbors of those portions of the Dominion of America of His said late Majesty King George the third, being the Dominions in America of Her Majesty Queen Victoria, not included within the limits specified and defined in the said first article of the said convention and set out and recited in the first paragraph hereof, to fish for fish and take fish and did dry and cure fish and were prepared to fish within the meaning of the said convention and of the said several Acts hereinbefore mentioned contrary to the provisions of the said convention and of the said several Acts and the said vessel *David J. Adams* and her cargo were thereupon seized within three marine miles of the shores of the coasts or shores of the said Annapolis Basin by Peter A. Scott, a fishery officer on board of the steamship *Lansdowne*, a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

10. The said Aldon Kinney, the Master of the said ship or vessel *David J. Adams*, and the officers and crew of the said ship or vessel *David J. Adams*, were on or about the said 6th day of May 1886, and subsequently in the said ship or vessel *David J. Adams*, in the Annapolis Basin aforesaid and while he and they and the said ship or vessel *David J. Adams* were within three marine miles of the coasts or shores of the said Annapolis Basin and within three marine miles of the coasts, bays, creeks and harbors of those portions of the Dominion of America of His late Majesty King George the third, being now the Dominions in America of Her Majesty Queen Victoria, not included within the limits specified and defined in the said first article of the said convention and set out and recited in the first paragraph hereof, prepared to fish within the meaning of the Convention and of the said several Acts hereinbefore mentioned contrary to the provisions of the said Convention and of the said several Acts and the said vessel *David J. Adams* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said Annapolis Basin by Peter A. Scott, a fishery officer on board of the steamship *Lansdowne*, a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

11. On or about the said 6th day of May 1886, and subsequently in the said Annapolis Basin within three marine miles of the shores thereof and within three marine miles of the coasts, bays, creeks and harbors of those portions or parts of the Dominion in America of His late Majesty King George the third being now the Dominions in America of Her Majesty Queen Victoria, not included within the limits specified and defined in the said first articles of the said Convention and set out and recited in the first paragraph hereof the said ship or vessel *David J. Adams* was found to be fishing within the said distance of three marine miles of the said coasts, bays, creeks and harbors contrary to the provisions of the said Convention and of the said several Acts, and the said vessel *David J. Adams* and her cargo were thereupon seized within

of the said ship or vessel of the said ship or vessel 6th day of May 1886, and said *J. Adams*, in the *Annandale* and the said ship or vessel within three marine miles of the coasts or shores of the marine miles of the coasts, and portions of the Dominions in the third, being now the Dominion of Victoria, not included within the first article of the said Convention, and the said ship or vessel, in the paragraph hereof, preparing to land on and of the several Acts and provisions of the said Convention, and the said vessel *David J Adams* within three marine miles of the coasts of the Dominion of Victoria, by Peter A. Scott, a fishery agent, a vessel belonging to the Dominion of Canada and employed in the Dominion of Canada, and liable to forfeiture for breach of the said several Acts.

86, and subsequently in the miles of the shores thereof bays, creeks and harbors of America of His late Majesty in America of Her present limits specified and convention and set out and ship or vessel *David J.* and distance of three marine contracts to the provisions acts, and the said reupon seized within three

marine miles of the coasts or shores of the said Annapolis Basin by Peter Scott, a fishery officer on board of the steamship *Lansdowne*, a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

12. On or about the said 6th day of May 1886, and subsequently thereto, the said Annapolis Basin within three marine miles of the shores thereof and within three marine miles of the coasts, bays, creeks or harbors of those parts or portions of the Dominions in America of His said late Majesty King George the third, being now the Dominions in America of Her present Majesty Queen Victoria, not included within the limits specified and defined in the said first article of the said Convention and set out and recited in the first paragraph hereof the said ship or vessel *David J. Adams*, was found to have been fishing within the said distance of three marine miles of the said coasts, bays, creeks and harbors contrary to the provisions of the said Convention and of the said several Acts and the said vessel *David J. Adams* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said Annapolis Basin by Peter A. Scott, a fishery officer on board of the steamship *Lansdowne*, a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

13. On or about the said 6th day of May 1886, and subsequently in the said Annapolis Basin within three marine miles of the shores thereof, and within three marine miles of the coasts, bays, creeks or harbors of those parts or portions of the Dominions in America of His said late Majesty King George the third, being now the Dominions in America of Her present Majesty Queen Victoria, not included within the limits specified and defined in the said first article of the said Convention and set out and recited in the first paragraph hereof the said ship or vessel *David J. Adams* was found to be preparing to fish within the said distance of three marine miles of the said coasts, bays, creeks and harbors contrary to the provisions of the said Convention and of the said several Acts.

14. During the months of April and May 1886, the said Aldon Kinney, the master of the said ship or vessel *David J. Adams*, and the officers and crew of the said ship or vessel *David J. Adams*, did, in the said ship or vessel *David J. Adams*, enter within three marine miles of the coasts, bays, creeks and harbors of the province of Nova Scotia, being a portion of the Dominions in America formerly of His said late Majesty King George the third and now of Her said Majesty Queen Victoria, not included within the limits specified and defined in the said first article of the said Convention and set out and recited in the first paragraph hereof for the purpose of procuring bait, that is to say herrings, wherewith to fish, and ice for the preservation on board said vessel of bait to be used in fishing and of fresh fish to be fished for, taken and caught by and upon the said vessel and by the Master officers and crew thereof, and did procure such bait wherewith to fish, and such ice for the purposes aforesaid, and did so enter for other purposes than the purpose of shelter or repairing damages or of purchasing wood or of obtaining water contrary to the provisions of the said Convention and of the said several Acts and the said vessel *David J. Adams* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said Province of Nova Scotia by Peter A. Scott, a fishery officer on board of the steamship *Lansdowne*, a

vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

15. During the months of April and May 1886, the said Aldon Kinney, the Master of the said ship or vessel *David J. Adams*, and the officers and crew of the said ship or vessel *David J. Adams*, did, in the said ship or vessel *David J. Adams*, and while he and they and the said ship or vessel *David J. Adams* were within three marine miles of the coasts, bays, creeks and harbors of the Province of Nova Scotia, being a portion of the Dominions in America formerly of His said late Majesty King George the third and now of Her Majesty Queen Victoria, not included within the limits specified and defined in the said first article of the said Convention and set out and recited in the first paragraph hereof, fish for fish, take fish, and dry and cure fish and were preparing to fish within the meaning of the said Convention and of the several Acts hereinbefore mentioned contrary to the provisions of the said Convention and of the said several acts and the said vessel *David J. Adams* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said Province of Nova Scotia, by Peter A. Scott, a fishery officer on board of the steamship *Lansdowne*, a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries, as being liable to forfeiture for breach or violation of the said convention and of the said several acts.

10. During the months of April and May, 1886, the said Aldon Kinney, the master of the said ship or vessel *David J. Adams*, and the officers and crew of the said ship or vessel *David J. Adams*, were in the said ship or vessel *David J. Adams* and while he and they and the said ship or vessel *David J. Adams* were within three marine miles of the coasts, bays, creeks and harbors of the Province of Nova Scotia, being a portion of the Dominions in America formerly of His said late Majesty King George the third and now of Her Majesty Queen Victoria, not included within the limits specified and defined in the said first article of the said Convention and set out and recited in the first paragraph hereof, preparing to fish within the meaning of the said Convention and of the several Acts hereinbefore mentioned contrary to the provisions of the said Convention and of the said several Acts and the said vessel *David J. Adams* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said Province of Nova Scotia, by Peter A. Scott, a fishery officer on board of the steamship *Lansdowne*, a vessel belonging to and in the service of the Government of Canada and employed in the service of protecting the fisheries, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

The Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada, on behalf of Her Majesty the Queen claims the condemnation of the said ship and her cargo and her guns ammunition, tackle, apparel, furniture and stores for violation of the said Convention and of the said several acts.

WALLACE GRAHAM
Solicitor of the Attorney General of Canada.

(Indorsed :) V. Admiralty Court. Regina vs *David J. Adams*. Petition.

Filed 6, July 1886.

I Certify that a copy of the within petition was served upon N. H. Leagher, the Solicitor of the defendants herein, this 6th day of July 1886.

WALLACE GRAHAM
Solicitor for the Atty. General of Canada.

A true copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,

against

THE SHIP OR VESSEL "ELLA M. DOUGHTY" } No 473.
and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

I, Lauchlin G. Campbell, of Baddeck, in the County of Victoria, and Province of Nova Scotia, Collector of Customs, make oath and say as follows—

1. That the Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada, claims on behalf of Her Majesty the Queen to have the said ship or vessel, *Ella M. Doughty*, and her cargo, condemned to Her Majesty the Queen for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made and signed at London in Great Britain on the twentieth day of October in the year of our Lord 1818, and also for violation of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said Parliament made and passed in the said year and being intituled "An act to enable His Majesty to make regulations with respect to the taking and curing of fish in certain parts of the coasts of Newfoundland, Labrador and His said Majesty's other possessions in North America, according to a convention made between His Majesty and the United States of America" The said Honorable John S. D. Thompson, Her Majesty's Attorney General

for the Dominion of Canada, also claims on behalf of Her Majesty the Queen to have the said ship *Ella M. Doughty* and her cargo condemned as forfeited to Her Majesty the Queen for violation of chapter six of one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and intituled "An Act respecting fishing by foreign vessels," and for violation of chapter fifteen of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1870, and intituled "An Act to amend the Act respecting fishing by foreign vessels" and for violation of chapter twenty three of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1871, and intituled "An Act further to amend the Act respecting fishing by foreign vessels."

The said ship *Ella M. Doughty* is a foreign vessel not navigated according to the laws of the United Kingdom of Great Britain and Ireland or of the Dominion of Canada and is registered in the United States of America and is owned by foreigners residing in the said United States of America.

I further make oath and say that the aid of this court is required to enforce the said claim.

I am the Collector of Customs at Baddeck aforesaid—

LAUCHLIN GEORGE CAMPBELL,
Collector of Customs.

On the 25th day of May A. D. 1886, the said Lauchlin George Campbell was duly sworn to the truth of this affidavit at Baddeck, in the County of Victoria and Province of Nova Scotia.

Before me,

ALEX TAYLOR,
A Commissioner duly appointed to administer oaths in the
Vice Admiralty Court of Halifax.

(Indorsed:) In Vice Admiralty Court of Halifax. Her Majesty the Queen against the ship or vessel *Ella M. Doughty* and her cargo. Affid. of L. G. Campbell.
filed 28 May 1886.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "ELLA M. DOUGHTY"
and her cargo. } No. 473.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland

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s residing in the said

his court is required to

foresaid—
L. G. CAMPBELL,
Collector of Customs.

Lauchlin George Camp
vit at Baddeck, in the

KE TAYLOR,
minister oaths in the
Vice Admiralty Court of Halifax.

Halifax. Her Majesty the
and her cargo. Affid.

W. DES BARRES,
Registrar.

F HALIFAX.

o. 473.

her cargo for violation of
George the third King
land of the one part
made on the twen-
the Act of the Parlia-
and Ireland made and
late Majesty George
Britain and Ireland,

ing chapter thirty eight of the acts of the said last named Parliament
de and passed in the said year. Also for forfeiture of the said ves-
and her cargo for violation of chapter 61 of the acts of the Parlia-
ment of the Dominion of Canada made and passed in the year 18¹⁸. and
chapter fifteen of the Acts of the said Parliament passed and made
the year 1870, and of chapter twenty three of the Acts of the said Par-
ment made and passed in the year 1871.

Lauchlin G. Campbell of Baddeck, in the County of Victoria, Col-
lector of Customs, make oath and say as follows—

1. That on Monday the 31st day of May A. D. 1886, I did, as the Dep-
uty duly appointed of William Twining, Marshal of the Vice Admiralty
Court of Halifax, duly serve the original warrant herein hereunto an-
nexed marked A upon the said ship or vessel *Ella M. Doughty* above
named and upon the said cargo of the said vessel on board of the said
ship or vessel *Ella M. Doughty* by attaching the said original warrant
to the mainmast of the said ship or vessel *Ella M. Doughty*, for a short
time and by attaching and leaving attached to the said mainmast a true
copy of the said original warrant and upon the cargo of the said ship
or vessel *Ella M. Doughty*, not on board the said vessel and situate at
English Town in the County of Victoria, by attaching the said original
warrant for a short time to the said cargo and by leaving a copy of
the said original warrant attached thereto.

2. That I am the Deputy duly authorized in this behalf of the said
William Twining, the Marshal of the Vice Admiralty Court of Halifax.

L. G. CAMPBELL,

Deputy Marshal Vice Admiralty Court of Halifax.

On the first day of June A. D. 1886, at Baddeck, in the County of Vic-
toria and Province of Nova Scotia, the said Lauchlin G. Campbell was
duly sworn to the truth of this affidavit.

Before me,

ALEX^R TAYLOR,

A Commissioner duly appointed to administer oaths
in the Vice Admiralty Court of Halifax.

A.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "ELLA M. DOUGHTY" } No. 473.
and her cargo.

Action for forfeiture of said vessel and her cargo for violation of a
certain convention between His late Majesty George the third King of
the United Kingdom of Great Britain and Ireland of the one part and
the United States of America of the other part made on the twentieth
day of October 1818. And for violation of the act of the Parliament of
the United Kingdom of Great Britain and Ireland made and passed in
the fifty ninth year of the reign of His late Majesty George the third
King of the United Kingdom of Great Britain and Ireland, being chap-

ter thirty eight of the Acts of the last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India. To the Marshal of our Vice Admiralty Court of Halifax:

We hereby command you to arrest the ship or vessel *Ella M. Doughty* and her cargo, and to keep the same under safe arrest until you shall receive further orders from us.

Given at Halifax, in the Province of Nova Scotia, in our said Court under the seal thereof this twenty eighth day of May A. D. 1886.

L. W. DES BARRES,
Registrar.

Warrant taken out by Wallace Graham, Solicitor for the Attorney General of Canada.

This warrant was served on the 31st day of May A. D. 1886, by Lauchlin G. Campbell, a Deputy of the Marshal of the Court of Vice Admiralty of Halifax, appointed for the purpose, by attaching the same to the mainmast of the said vessel & also to the cargo of said vessel for a short time and leaving a copy attached to said vessel & cargo as will fully appear by reference to the affidavit of said Lauchlin Campbell annexed hereto.

WILLIAM TWINING,
Marshal Vice Admiralty Court of Halifax, N. S.

Halifax, 18 June 1886.

This warrant was served by William Twining, Marshal of the Vice Admiralty Court of Halifax, by the hands of Lauchlin G. Campbell, Collector of Customs of Baddeck, in the County of Victoria, acting as the deputy duly appointed and authorized of the said William Twining, Marshal of the Vice Admiralty Court of Halifax, on the within named ship or vessel *Ella M. Doughty*, and upon the said cargo on board the said ship or vessel *Ella M. Doughty*, by attaching the said original warrant for a short time to the mainmast of the said ship or vessel *Ella M. Doughty*, and by leaving a true copy of said original warrant attached to the said mainmast and upon the cargo of the said ship or vessel *Ella M. Doughty*, not on board the said ship or vessel *Ella M. Doughty* and situate at English Town, in the County of Victoria, by attaching the said original warrant for a short time to the said cargo and by leaving a copy of the said original warrant attached thereto on Monday the thirty first day of May A. D. 1886.

L. G. CAMPBELL,
Deputy Marshal Vice Admiralty Court of Halifax.

IN THE VICE-ADMIRALTY COURT OF HALIFAX

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 SHIP OR VESSEL "ELLA M. DOUGHTY" } No. 473.
 and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third of the United Kingdom of Great Britain and Ireland, being chapter eighty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

Lanchlin G. Campbell, of Baddeck, in the County of Victoria and Province of Nova Scotia, Dominion of Canada, Collector of Customs greeting:

These are to authorize and empower you to act as my Deputy in the matter of the arrest and custody of the ship or vessel called the *Ella M. Doughty*, and her cargo, under the Warrant issued out of this Court in the above cause dated this day.

Witness my hand and seal at Halifax, this 28th day of May A. D. 1886.

[L. S.] WILLIAM TWINING,
Marshal of the Vice Admiralty Court of Halifax, Nova Scotia.

(Indorsed:) V. Admiralty Court 1886. 473. The Queen a/g't *Ella M. Doughty* & cargo. Aff'd't of L. G. Campbell. Warrant &c.
 Filed 23 June 1886.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL "ELLA M. DOUGHTY" } No. 473.
 and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth

eth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

I, Donald McAulay, of Englishtown, in the County of Victoria and Province of Nova Scotia, make oath and say as follows:

That I did on tuesday the twenty fifth day of May A. D. 1886, duly serve the writ of summons hereto annexed marked A upon the sails and dories of the said ship or vessel *Ella M. Doughty*, not on board of the said ship or vessel *Ella M. Doughty*, by attaching the said original writ of summons for a short time to the said sails and dories and by leaving a copy of the said original writ of summons attached to the said sails and dories.

DONALD MCAULAY,
Sub-Collector.

On the 26th day of May A. D. 1886, the said Donald McAulay was duly sworn to the truth of this affidavit, at Baddeck, in the County of Victoria and Province of Nova Scotia.

Before me

ALEX^R TAYLOR,
A Commissioner duly appointed to administer oaths
in the Vice Admiralty Court of Halifax.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,	} No. 473.
against	
THE SHIP OR VESSEL "ELLA M. DOUGHTY," and her cargo.	

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

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DONALD MCAULAY,
Sub-Collector.

Donald McAulay was duly
in the County of Victoria

ALEX'R TAYLOR,
to administer oaths
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OF HALIFAX.

No. 473.

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1871.

Donald McAulay, of St Anna, in the County of Victoria, in the Prov-
of Nova Scotia, sub-Collector, make oath and say as follows:

That I did on tuesday the twenty fifth day of May A. D. 1886, duly
the writ of summons hereto annexed marked A upon the said ship
essel *Ella M Doughty* and the cargo on board thereof, by attaching
said original writ of summons for a short time to the mainmast of
said above-named ship or vessel *Ella M. Doughty* and by leaving a
copy of the said original writ of summons attached to the main-
of the said ship or vessel *Ella M. Doughty*.

DONALD MCAULAY,
Sub-collector.

On the 26th day of May A. D. 1886, the said Donald McAulay was duly
rn to the truth of this affidavit, at Baddeck, in the County of Victoria
Province of Nova Scotia.
before me,

ALEX'R TAYLOR
A Commissioner duly appointed to administer oaths
in the Vice Admiralty Court of Halifax.

A.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "ELLA M. DOUGHTY" } No 473.
and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of
certain convention between His late Majesty George the third King
of the United Kingdom of Great Britain and Ireland of the one part
and the United States of America of the other part made on the twen-
ty sixth day of October 1818. And for violation of the Act of the Parlia-
ment of the United Kingdom of Great Britain and Ireland made and
passed in the fifty ninth year of the reign of His late Majesty George
the third King of the United Kingdom of Great Britain and Ireland,
being chapter thirty eight of the Acts of the said last named Parliament
made and passed in the said year. Also for forfeiture of the said ves-
sel and her cargo for violation of chapter sixty one of the Acts of the
Parliament of the Dominion of Canada made and passed in the year
1868, and of chapter fifteen of the Acts of the said Parliament passed
and made in the year 1870, and of chapter twenty three of the Acts of
the said Parliament made and passed in the year 1871.

Victoria by the Grace of God of the United Kingdom of Great Britain
and Ireland Queen, Defender of the Faith, Empress of India—to the
owners and all others interested in the ship *Ella M. Doughty* and her
cargo.

We command you that within one week after the service of this writ
exclusive of the day of such service you do cause an appearance to be
entered for you in Our Vice Admiralty Court of Halifax in the above

named action and take notice that in default of your so doing the action may proceed and judgment may be given in your absence.

Given at Halifax, in our said Court, under the seal thereof this twentieth day of May A. D. 1886.

This writ may be served within six months from the date thereof exclusive of the day of such date but not afterwards.

The defendants may appear hereto by entering an appearance either personally or by Solicitor at the Registry of the said Court situated number thirty five Bedford Row, in the City of Halifax and Province of Nova Scotia.

1. The Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada, claims on behalf of Her Majesty the Queen to have the ship *Ella M. Doughty*, being a foreign ship or vessel not navigated according to the laws of the United Kingdom aforesaid or of Canada and registered in and owned by foreigners residing in the United States of America, and her cargo condemned as forfeited to Her Majesty the Queen for violation of a certain convention between Her late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made and signed at London, in Great Britain, on the twentieth day of October in the year of Our Lord 1818. And also for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said Parliament made and passed in the said year and being intituled "An Act to enable His Majesty to make regulations with respect to the taking and curing of fish in certain parts of the Coasts of Newfoundland, Labrador and His said Majesty's other possessions in North America according to a convention made between His Majesty and the United States of America."

The said Honorable John S. D. Thompson, Her Majesty's Attorney General for the Dominion of Canada, also claims on behalf of Her Majesty the Queen to have the said ship *Ella M. Doughty*, being a foreign ship or vessel as aforesaid, and her cargo condemned as forfeited to Her Majesty the Queen for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and intituled "An Act respecting fishing by foreign vessels" and of chapter fifteen of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1870, and intituled "An Act to amend the Act respecting the fishing by foreign vessels" and of chapter twenty three of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1871, intituled "An Act further to amend the Act respecting fishing by foreign vessels."

2. This writ was issued by Wallace Graham of 119 Hollis Street, the City of Halifax and Province of Nova Scotia, Solicitor for the Attorney General of Canada.

3. All documents required to be served upon the Crown in this action may be left at 119 Hollis Street, in the City of Halifax and Province of Nova Scotia.

This writ of summons was served by Donald McAulay, sub-Collector upon the said ship *Ella M. Doughty* and upon the said cargo on board thereof by attaching the said original writ of summons for a short time to the mainmast of the said ship *Ella M. Doughty* and by leaving a copy of the said original writ of summons attached to the said mainmast

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McAulay, sub-Collector,
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y and by leaving a copy
to the said mainmast of

said ship or vessel *Ellis M. Doughty*, on tuesday the twenty fifth day
May A. D. 1886.

DONALD MCAULAY,

(Indorsed :) V. Admiralty Court. 473. The Queen ag't *Ellis M. Doughty* & cargo. affdts. D. McAulay & writ of summons.
filed June 28. 1886.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "ELLA M. DOUGHTY"
and her cargo. } No. 473.

Action for forfeiture of the said vessel and her cargo for violation of certain convention between his late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for violation of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

I, Robert L. Borden of Halifax, in the County of Halifax, Barrister at Law, make oath and say as follows:

1. I am a partner in business of the Solicitor of the Attorney General of Canada in this cause.

2. This is an action brought by Her Majesty for the forfeiture of the said vessel and her cargo. Annexed hereto marked A is a true copy of the writ of summons herein and indorsements thereon. The writ of summons was issued on the twentieth day of May A. D. 1886, and was duly served on the said ship and cargo, and the said vessel and her cargo have been duly arrested under a warrant issued out of this honorable Court in this action. I beg leave to refer to the original writ of summons and to the original warrant on file herein and to the returns hereto, and to the papers on file in this cause in the office of the Registrar at Halifax.

3. N. H. Meagher, Esquire, Q. C. has appeared for Warren A. Doughty herein on the twenty fourth day of June A. D. 1886.

4. It is desirable, as I am instructed and do verily believe, that there should be pleadings in this action and I believe that by means thereof this action can be more conveniently tried and that a saving of expense will thereby be effected. That unless pleadings are ordered herein the issues of fact will be of an exceedingly general nature so that it will be

almost or quite impossible for either party to have any idea except by surmise of what specific questions of fact are really in dispute herein.

5. That on account of the absence of the Honorable the Chief Justice on Circuit I have been unable to make this motion at an earlier date.

R. L. BORDEN.

On the 28th day of June A. D. 1886, the said Robert L. Borden was duly sworn to the truth of this affidavit at Halifax, in the County of Halifax, Before me,

L. W. DES BARRES,
Registrar.

N. B. The paper referred to in this affidavit as "annexed marked A" is a true copy of the writ of summons annexed to the affidavits of Donald McAulay made herein the 26th day of May 1886, which writ is also marked "A."

L. W. DES BARRES,
Registrar.

(Indorsed:) V. Admiralty Court. 473. The Queen vs Ella M. Doughty. Aff'd't of R. L. Borden.
filed 28 June 1886.

I Certify that a true copy of the within affidavit was served on the Solicitor of the defendant before 12 o'clock noon on the 28th June 1886.

WALLACE GRAHAM.
Solicitor of the Attorney General of Canada.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "ELLA M. DOUGHTY" } No. 473.
and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of a certain convention between his late Majesty George the third King of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the twentieth day of October 1818. And for viola'on of the Act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty ninth year of the reign of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland, being chapter thirty eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo for violation of chapter sixty one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter fifteen of the Acts of the said Parliament passed and made in the year 1870, and of chapter twenty three of the Acts of the said Parliament made and passed in the year 1871.

Take notice that on tuesday the twenty ninth day of June A. D. 1886,

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y in dispute herein.
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at an earlier date.
R. L. BORDEN.

Robert L. Borden was
ifax, in the County

DES BARRES,
Registrar.

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DES BARRES,
Registrar.

Queen vs Ella M.

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the 28th June 1886.
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General of Canada.

DES BARRES,
Registrar.

HALIFAX.

473.

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y of June A. D. 1886,

at 12 o'clock noon at the County Court House, Halifax, the plaintiff will
by Counsel move the Judge in Chambers to order that the parties
hereto do file and serve pleadings herein in the manner and at the times
provided by the rules respecting procedure when an order is made for
pleadings.

Said motion will be made upon the affidavit of Robert L. Borden,
filed this day and on the papers on file.

Dated, Halifax, 28 June 1886.

WALLACE GRAHAM,
Solicitor of the Attorney General of Canada.

(Indorsed:) Vice Admiralty Court. 473. The Queen vs. Ella M.
Doughty. Notice of Motion.
filed 28 June 1886.

I Certify that a true copy of this notice was served on the Solicitor
of the defendant before 12 o'clock noon on the 28 June 1886.

WALLACE GRAHAM,
Solicitor of Attorney General of Canada.

A correct copy.

L. W. DES BARRES,
Registrar.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL ELLA M. DOUGHTY } No. 473.
and her cargo.

Action for forfeiture of the said vessel and her cargo for violation of
a certain convention between His late Majesty George the third King
of the United Kingdom of Great Britain and Ireland of the one part
and the United States of America of the other part made on the twen-
tieth day of October 1818. And for violation of the Act of the Parlia-
ment of the United Kingdom of Great Britain and Ireland made and
passed in the fifty ninth year of the reign of His late Majesty George
the third King of the United Kingdom of Great Britain and Ireland,
being chapter thirty-eight of the Acts of the said last named Parlia-
ment made and passed in the said year. Also for forfeiture of the said
vessel and her cargo for violation of chapter sixty one of the Acts of
the Parliament of the Dominion of Canada made and passed in the
year 1868, and of chapter fifteen of the Acts of the said Parliament
passed and made in the year 1870, and of chapter twenty three of the
Acts of the said Parliament made and passed in the year 1871.

On the 29th day of June A. D. 1886, Before the Honorable James Mc-
Donald Judge.

Upon hearing Counsel for the plaintiff and for the defendant and
upon reading the affidavit of Robert L. Borden filed herein on the 28th
day of June 1886, and the notice of motion filed herein on the 28th day
of June 1886, and the affidavit of James M. Power of the service and
filing thereof:

It is ordered that this action be heard with pleadings and that the

parties hereto do file and serve pleadings herein in the manner and the times prescribed in such case by the rules and practice of the Honorable Court and that the costs of this application be costs in the cause.

L. W. DES BARRES
Registrar

(Indorsed:) V. Admiralty Court. The Queen vs. *Elia M.*
Order for pleadings.

Filed June 30, 1886.

I Certify that a copy of the within order was served upon Meagher, Esq. on the 30th day of June 1886.

WALLACE GRAHAM
Solicitor for the Attorney General of Ontario

A correct copy.

L. W. DES BARRES
Registrar

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF, <i>against</i> THE SHIP OR VESSEL "ELLA M. DOUGHTY" and her cargo.	}	No 473.
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Action for forfeiture of the said vessel and her cargo for violation of a certain convention between His late Majesty George the third of the United Kingdom of Great Britain and Ireland of the one part and the United States of America of the other part made on the 11th day of October 1818. And for violation of the act of the Parliament of the United Kingdom of Great Britain and Ireland made and passed in the fifty-ninth year of the reign of His late Majesty George the third of the United Kingdom of Great Britain and Ireland, being chapter eight of the Acts of the said last named Parliament made and passed in the said year. Also for forfeiture of the said vessel and her cargo in violation of chapter sixty-one of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1868, and of chapter sixteen of the Acts of the said Parliament passed and made in the year 1870 and of chapter twenty-three of the Acts of the said Parliament passed in the year 1871.

Writ issued on the 20th day of May A. D. 1886.

1. A certain convention between His late Majesty George the third of the United Kingdom of Great Britain and Ireland and the United States of America was made and signed at London on the 11th day of October 1818, and by the first article thereof after reciting that differences had arisen respecting the liberty claimed by the said United States for the inhabitants thereof to take dry and cure fish on certain bays, harbors and creeks of His Britannic Majesty's Dominions in North America it was agreed between the high contracting parties that the inhabitants of the said United States should have forever in common with the subjects of His Britannic Majesty the liberty to take fish of every kind on that part of the Southern coast of Newfoundland which lies between Cape Ray to the Rameau Islands on the western and

herein in the manner and as
rules and practice of this Hon.
application be costs in the cause.

L. W. DES BARRES,
Registrar.

the Queen vs. Ella M. Doughty.

order was served upon N. H.
1886.

WALLACE GRAHAM,
Attorney General of Canada.

L. W. DES BARRES,
Registrar.

COURT OF HALIFAX.

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"No 473.

el and her cargo for violation of
Majesty George the third King of
and Ireland of the one part and
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A. D. 1886,
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forever in common with the sub-
erty to take fish of every kind
Newfoundland which extends
on the western and northern

acts of Newfoundland from the said Cape Ray to the Quirpon Islands
the shores of the Magdalen Islands, and also on the coasts, bays, har-
bors and creeks from Mount Joly on the Southern coast of Labrador to
and through the Straits of Belle Isle and thence Northwardly indefinitely
along the coast without prejudice however to any of the exclusive rights
of the Hudsons Bay Company: and that the American fishermen should
not have liberty forever to dry and cure fish in any of the unsettled
bays, harbors and creeks of the southern part of the coast of Newfound-
land there above described and of the coast of Labrador; but so soon
as the same or any portion thereof should be settled it should not be
lawful for the said fishermen to dry and cure fish at such portion so set-
tled without previous agreement for such purpose with the inhabitants,
proprietors or possessors of the ground. And the said United States
thereby renounced forever any liberty theretofore enjoyed or claimed by
the inhabitants thereof to take, dry or cure fish on or within three marine
miles of any of the coasts, bays, creeks or harbors of His Majesty's Do-
minions in America not included within the above-mentioned limits;
provided however that the American fishermen should be admitted to
enter such bays or harbors for the purpose of shelter and of repairing dam-
ages therein, of purchasing wood and of obtaining water and for no other
purpose whatever. But they should be under such restrictions as might
be necessary to prevent their taking drying and curing fish therein or
in any other manner whatever abusing the privileges thereby reserved
to them.

2. That a certain Act of the Parliament of the United Kingdom of
Great Britain and Ireland was made and passed in the fifty-ninth year
of the reign of His late Majesty King George the third being chapter
thirty-eight of the Acts of the said Parliament made and passed in the
fifty-ninth year of the reign of His said late Majesty King George the
third and being entitled "An Act to enable His Majesty to make regu-
lations with respect to the taking and curing of fish on certain parts of
the coasts of Newfoundland, Labrador, and His Majesty's other posses-
sions in North America according to a convention made between His
Majesty and the United States of America."

3. That on the 29th day of March A. D. 1867, a certain other Act of the
Parliament of the United Kingdom of Great Britain and Ireland was
made and passed, being chapter three of the Acts of the said Parliament
passed in the thirtieth and thirty first years of the reign of Her present
Majesty Victoria Queen of the United Kingdom of Great Britain and
Ireland and being entitled "An Act for the union of Canada and Nova
Scotia and New Brunswick and the Government thereof and for purposes
connected therewith," which said Act is cited and known as 'The Brit-
ish North America Act 1867.'

4. That a certain Act of the Parliament of Canada was made and passed
in the thirty-first year of the reign of Her said Majesty Queen Victoria
being chapter sixty one of the Acts of the said Parliament made and
passed in the year 1868, and being entitled "An Act respecting fishing
by foreign vessels," And a certain other Act of the Parliament of Can-
ada was made and passed in the thirty third year of the reign of Her
said Majesty Queen Victoria being chapter fifteen of the Acts of the
said Parliament made and passed in the year 1870, and being entitled
"An Act to amend the Act respecting fishing by foreign vessels." And
in the thirty fourth year of the reign of Her said Majesty Queen Victoria
a certain other Act of the said Parliament of Canada was made and
passed, being chapter twenty three of the Acts of the said Parliament

made and passed in the year 1871, and being entitled "An Act further to amend the Act respecting fishing by foreign vessels."

5. That the said convention and the said several Acts hereinbefore mentioned were and are still in full force and effect.

6. The harbor of St Anns situate in the County of Victoria in the Province of Nova Scotia, together with its outlet to the Bay of St Anns and also the said Bay of St Anns all hereinafter designated as the Bay and Harbor of St Anns are a portion of the Dominions in America formerly of His late Majesty George the third King of the United Kingdom of Great Britain and Ireland and now of Her Majesty Queen Victoria Queen of the United Kingdom of Great Britain and Ireland not including or lying on that part of the Southern coast of Newfoundland which extends to Cape Ray to the Rameau Islands, on the Western and Northern coasts of Newfoundland from the said Cape Ray to the Quirpon Island on the shores of the Magdalen Islands or on the coasts, bays, harbors and creeks from Mount Joly on the Southern coast of Labrador to the Straits of Belle Isle and thence northwardly indefinitely along the coast.

7. That the said ship *Ella M. Doughty*, whereof one Warren A. Doughty who was not a natural born subject of Her Majesty was or is Master, a foreign ship or vessel not navigated according to the laws of the United Kingdom of Great Britain and Ireland or according to the laws of Canada but was and is a ship of the United States of America owned by foreigners, that is to say, by persons residing in and being citizens of the United States of America where the said ship or vessel was built and enrolled and the said ship or vessel *Ella M. Doughty* was at the time hereinafter mentioned licensed and permitted to carry on the fisheries under and in pursuance of the Acts of the United States of America and was engaged in the prosecution of the fisheries and on a fishing voyage and was and is without a license to fish or any license whatever in that behalf from the Government of Canada or of Nova Scotia under the statutes of Canada or of Nova Scotia in that behalf.

8. Between the tenth and the seventeenth days of May 1886, the said Warren A. Doughty, the Master of the said ship or vessel *Ella M. Doughty* and the officers and crew of the said ship or vessel *Ella M. Doughty* entered in and with the said ship or vessel *Ella M. Doughty* enter into the Bay and harbor of St Anns aforesaid within three marine miles of the shores of the said Bay and harbor of St Anns and within three miles of the coasts, bays, creeks and harbors of those portions of the Dominions in America of His said late Majesty King George the third being now the Dominions in America of Her Majesty Queen Victoria not including within the limits specified and defined in the said first Article of the said Convention and set out and recited in the first paragraph hereof for the purpose of procuring bait, that is to say, Herrings, wherewith fish, and ice for the preservation on board said vessel of bait to be used in fishing and of fresh fish to be fished for taken and caught by and upon the said vessel and by the master officers and crew thereof and did procure such bait wherewith to fish and such ice for the purpose aforesaid and did so enter for other purposes than the purpose of shelter or repairing damages or of purchasing wood, or of obtaining water contrary to the provisions of the said Convention and of the said several Acts, and the said vessel *Ella M. Doughty* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said Bay and harbor of St Anns by Donald McAulay and Launch G. Campbell, officers of the Customs of Canada, as being liable to

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several Acts.

9. The said Warren A. Doughty, the master of the said ship or vessel
Ella M. Doughty, and the officers and crew of the said ship or vessel *Ella*
M. Doughty did, between the tenth and seventeenth days of May 1886,
and subsequently in the said ship or vessel *Ella M. Doughty* in the Bay
and harbor of St Anns aforesaid and while he and they and the said
ship or vessel *Ella M. Doughty* were within three marine miles of the
coasts or shores of the said Bay and harbor of St Anns and within
three marine miles of the coasts, shores, bays, creeks and harbors of those
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trary to the provisions of the said Convention and of the said several
acts and the said vessel *Ella M. Doughty* and her cargo were thereupon
seized within three marine miles of the coasts or shores of the said Bay
and harbor of St Anns by Donald McAulay and Lauchlin G. Campbell,
officers of the Customs of Canada, as being liable to forfeiture for viola-
tion of the said Convention and of the said several Acts.

10. The said Warren A. Doughty, the master of the said ship or vessel
Ella M. Doughty, and the officers and crew of the said ship and vessel
Ella M. Doughty, were between the said tenth and seventeenth days of
May 1886, and subsequently in the said ship or vessel *Ella M. Doughty*
in the Bay and harbor of St Anns aforesaid and while he and they and
the said ship or vessel *Ella M. Doughty* were within three marine miles
of the coasts or shores of the said Bay and harbor of St Anns and within
three marine miles of the coasts, shores, bays, creeks and harbors of those
portions of the Dominions in America of His late Majesty King George
the third being now the Dominions in America of Her Majesty Queen
Victoria not included within the limits specified and defined in the said
first article of the said Convention and set out and recited in the first
paragraph hereof preparing to fish within the meaning of the Conven-
tion and of the several Acts hereinbefore mentioned contrary to the
provisions of the said Convention and of the said several acts and the
said vessel *Ella M. Doughty* and her cargo were thereupon seized within
three marine miles of the coasts or shores of the said Bay and harbor
of St Anns by Donald McAulay and Lauchlin G. Campbell, officers of
the Customs of Canada, as being liable to forfeiture for breach or viola-
tion of the said Convention and of the said several Acts.

11. Between the said tenth and seventeenth days of May 1886, and
subsequently in the said Bay and harbor of St Anns within three ma-
rine miles of the shores thereof and within three marine miles of the
coasts, bays, creeks and harbors of those portions or parts of the Domin-
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the Dominions in America of Her present Majesty Queen Victoria not
included within the limits specified and defined in the said first article
of the said Convention and set out and recited in the said first para-
graph hereof, the said ship or vessel *Ella M. Doughty* was found to be
fishing within the said distance of three marine miles of the said coasts,
bays, creeks and harbors contrary to the provisions of the said conven-
tion and of the said several acts and the said vessel *Ella M. Doughty*
and her cargo were thereupon seized within three marine miles of the

coasts or shores of the said Bay and harbor of St Anns by Donald McAulay and Lauchlin G. Campbell, officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

12. Between the said tenth and seventeenth days of May 1886, and subsequently thereto in the said Bay and harbor of St Anns, within three marine miles of the shores thereof, and within three marine miles of the coasts, bays, creeks and harbors of those parts or portions of the Dominions in America of His said late Majesty King George the third being now the Dominions in America of Her present Majesty Queen Victoria not included within the limits specified and defined in the said first article of the said Convention and set out and recited in the said first paragraph hereof the said ship or vessel, *Ella M. Doughty*, was found to have been fishing within the said distance of three marine miles of the said coasts, bays, creeks and harbors contrary to the provisions of the said Convention and of the said several Acts and the said vessel *Ella M. Doughty* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said Bay and Harbor of St Anns by Donald McAulay and Lauchlin G. Campbell, Officers of the Customs of Canada, as being liable to forfeiture for breach or violation of the said Convention and of the said several Acts.

13. Between the said tenth and seventeenth days of May 1886, and subsequently in the said Bay and harbor of St Anns and within three marine miles of the shores thereof and within three marine miles of the coasts, bays, creeks and harbors of those parts or portions of the Dominions in America of His said late Majesty King George the third being now the Dominions in America of Her present Majesty Queen Victoria not included within the limits specified and defined in the said first article of the said Convention and set out and recited in the said first paragraph hereof, the said ship or vessel *Ella M. Doughty* was found to be preparing to fish within the said distance of three marine miles of the said coasts, bays, creeks and harbors contrary to the provisions of the said Convention and of the said several Acts and the said vessel *Ella M. Doughty* and her cargo were thereupon seized within three marine miles of the coasts or shores of the said bay or harbor of St Anns by Donald McAulay and Lauchlin G. Campbell, Officers of the Customs of Canada, as being liable to forfeiture for violation of the said Convention and of the said several Acts.

14. During the months of April and May 1886, the said Warren A. Doughty, the Master of the said ship or vessel *Ella M. Doughty*, and the officers and crew of the said ship or vessel *Ella M. Doughty*, did, in the said ship or vessel *Ella M. Doughty*, enter within three marine miles of the coasts, bays, creeks and harbors of the Province of Nova Scotia, being a portion of the Dominion of America of His said late Majesty King George the third and now of Her said Majesty Queen Victoria, not included within the limits specified and defined in the said first article of the said Convention and set out and recited in the first paragraph hereof for the purpose of procuring bait, that is to say, Herrings, wherewith to fish, and ice for the preservation on board said vessel of bait to be used in fishing, and of fresh fish to be fished for, taken and caught by and upon the said vessel and by the master, officers and crew thereof and did procure such bait wherewith to fish and such ice for the purposes aforesaid and did so enter for other purposes than the purpose of shelter or repairing damages or of purchasing wood or of obtaining water contrary to the provisions of the said Convention and of the said

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15. During the months of April and May 1886, the said Warren A.
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reof, fish for fish, take fish, and dry and cure fish and were preparing
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d of the said several Acts.

16. During the months of April and May 1886, the said Warren A.
oughty, the Master of the said ship or vessel *Ella M. Doughty*, and the
fficers and crew of the said ship or vessel *Ella M. Doughty*, were, in the
id ship or vessel *Ella M. Doughty*, and while he and they and the said
ip or vessel *Ella M. Doughty* were within three marine miles of the
coasts, bays, creeks and harbors of the Province of Nova Scotia, being a
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George the third, and now of Her Majesty Queen Victoria, not included
within the limits specified and defined in the said first article of the
id Convention set out and recited in the first paragraph hereof pre-
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id Convention and of the said several Acts and the said vessel *Ella*
M. Doughty and her cargo were thereupon seized within three marine
iles of the coasts or shores of the said Province of Nova Scotia by
onald McAulay and Lauchlin G. Campbell, officers of the Customs of
anada, as being liable to forfeiture for violation of the said convention
nd of the said several Acts.

The Honorable John B. D. Thompson, Her Majesty's Attorney Gen-
eral for the Dominion of Canada, on behalf of Her Majesty the Queen,
aims the condemnation of the said ship and her cargo and her guns,
munition, tackle, apparel, furniture and stores for violation of the
aid Convention and of the said several Acts.

WALLACE GRAHAM,

Solicitor for the Attorney General of Canada.

(Indorsed:) V. Admiralty Court. The Queen vs *Ella M. Doughty*.
etition.

Filed 6, July 1886.

A correct copy.

L. W. DES BARRES,
Registrar.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS"
and her cargo, defendants. } No. 472.

The defendant, the owner of the said vessel, to wit: Jesse Lewis, says as follows:

1. That there was not, at the time of the alleged seizure of the said vessel, nor at any time after her sailing from Gloucester, in the State of Massachusetts, as hereinafter set out, any cargo aboard said vessel except supplies suitable and necessary for the fishing voyage hereinafter set out, and except a certain amount of fresh halibut, between 1500 and 1800 pounds, caught by the master and crew while aboard of said vessel on the western banks in waters where said vessel and the master and crew thereof were lawfully entitled to fish for said halibut.

2. He admits the allegations set forth in the first paragraph of the petition filed herein as to the making and signing of the treaty or convention of October the 20th 1818, therein referred to. But for greater certainty they crave leave to refer to said treaty when produced at the trial of this action. And they further say that they submit and will insist that said treaty is to be construed in connection with the treaty between the United States of America and Great Britain made in A. D. 1783, and especially article third thereof.

3. As to second paragraph of said petition the defendant admits the passage as therein alleged of a certain act of the Parliament of Great Britain and Ireland in the fifty ninth year of the reign of George the Third, being chapter 38 of acts of said Parliament, and he also admits as therein alleged the passage of the act of the Parliament of Great Britain and Ireland referred to in paragraph 3 of said petition and also the passage by the Parliament of Canada of the several acts referred to in the fourth paragraph of said petition. But he denies that either of said acts prohibited the purchase of bait or ice as alleged in said petition or that there ever have been any order or orders in council, regulations, directions, or instructions as provided in said act of Parliament passed in the fifty ninth year of the reign of George the Third, prohibiting the purchase of bait or ice as alleged in said petition or any act either of the Parliament of Great Britain and Ireland or of the Parliament of the Dominion of Canada or any order or orders in council, regulations, directions or instructions imposing penalty of forfeiture under or by virtue of which said vessel, the *David J. Adams*, is liable to for

W. DES BARRES,
Registrar.

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o wit: Jesse Lewis, says

ged seizure of the said
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are for the purchase of bait or ice or for entering Annapolis basin
the purchase of bait or ice as alleged in said petition.

That, as to the several acts of the Parliament of the Dominion of Canada referred to in the fourth paragraph of the said petition, defendants say and say that the Parliament of Great Britain and Ireland has no authority to legislate in reference to the subject matter of said treaties and convention by the said act of the fifty ninth year of George the Third which remains in full force and by its terms necessarily is inconsistent with the said act of the said Parliament of Great Britain and Ireland, necessarily excludes any legislation of the Parliament of the Dominion of Canada, concerning the subject matter thereof and all regulations whatever in relation thereto except as expressly provided in said act of Parliament of Great Britain and Ireland. And that all legislation of the Dominion of Canada is unauthorized, null and void so far as same relates or assumes to relate to the matters set out in said petition or to said vessel, *David J. Adams*.

3. With reference to the fifth article of said petition they admit that the said convention and the said several acts passed by the Parliament of Great Britain and Ireland, hereinbefore mentioned, were and still are in full force and effect, save and except that additional privileges have been given to vessels of the United States and other foreign vessels by subsequent statutes and regulations hereinafter referred to.

3. With reference to paragraph 6 of said petition he admits that Annapolis basin, together with its outlet, Digby Gut, into the Bay of Fundy, in and between the counties of Digby and Annapolis in the Province of Nova Scotia, and he admits the further statements in said sixth paragraph contained.

7. He admits the statements contained in the seventh paragraph of his petition, but he avers that said *David J. Adams*, under the treaties of peace and the laws and regulations in that behalf had the right to trade, so far at least as the purchase of bait wherewith to carry on his deep sea fishing outside of and beyond said limits was concerned, in said Annapolis basin or in any other Canadian port.

8. With reference to the statements contained in the eighth paragraph of said petition save and except as herein specifically admitted he denies the same and every of them. He however admits that on or about the sixth day of May in the year of our Lord 1886, Aldon Kinney master, and the officers and crew of the said ship or vessel *David J. Adams*, did, in and with the said ship or vessel *David J. Adams*, enter to the said Annapolis basin and within three marine miles of the coast of Annapolis basin aforesaid, and within three marine miles of those portions of the dominions in America described in said paragraph. But he avers that said entry into said basin and port was made without his knowledge or consent and against his wishes and in direct violation of the orders given by him to said Aldon Kinney in that behalf respecting said voyage. And he further admits that said master, officers and crew entered said basin in and with the said vessel on or about the sixth day of May and did then and there procure by purchase and by payment of money therefor and in no other way, bait, to wit, herrings, wherewith to fish in the open sea and outside and beyond the limits and dominions aforesaid and outside of three marine miles and to fish therein in no other place than in said open sea without and beyond said dominions said limits and said three marine miles. And he denies that said master, officers and crew, or either of them, did procure by purchase or otherwise any ice within said bay or harbor or within said three marine miles.

And he denies that said master, officers and crew or either of them in and with said vessel, or said vessel did at or about the time alleged in said paragraph of said petition or subsequently and within said basin of Annapolis or within said three marine miles, any act or thing whatever contrary to the provisions of the said convention; and he denies that said master, officers and crew or either of them in and with said vessel or said vessel did at or about the time alleged in said paragraph or subsequently in said basin of Annapolis or within said three marine miles anything whatever contrary to the provisions of the said several acts or any of them even if said acts and all of them were of full force validity and effect.

And he further denies that the said vessel *David J. Adams* and the property aboard her or either of them were seized within three marine miles of the coasts or shores of the said basin by Peter A. Scott, or that they or either of them were seized at or about the time named in said paragraph at or about the place therein named or at any other time or place or by any person authorized to seize the same or that the same were or either of them was ever seized under any law authorizing said seizure.

And he further denies that said Peter A. Scott was a fishery officer as alleged in said petition or was duly authorized by law to seize said vessel and cargo. And he further denies that said vessel or cargo was liable as alleged in said paragraph to forfeiture for breach or violation of said convention and said several acts or either of them.

The said owner further says that the said bait was bought by the master of the said vessel to be used as hereinbefore set out in fishing on the banks outside of all bays, harbors and said three marine miles and outside of all waters prohibited by said convention and not elsewhere. He avers that the purchase of the said bait at the place and time and under the circumstances and for the purposes in this answer stated was lawful.

9. And the defendant further says that said vessel on or about the tenth of April last in command of said Aldon Kinney, with a crew of 12 men, lawfully sailed from Gloucester, in the State of Massachusetts, bound on a halibut fishing voyage to the Western Banks so called and to and at a place or places not within the limits specified and defined in said first article of the said convention but at a place or places where she was lawfully entitled to fish for halibut as aforesaid in accordance with the laws of the United States of America and in accordance with said convention and said treaty of 1783, and the laws of nations. She proceeded on her said voyage and arrived at the said banks and for a period of about 12 days prosecuted her said fishing voyage on said banks and caught a quantity of fish and her bait becoming exhausted she proceeded to Eastport, in the State of Maine, to procure a further supply thereof but being unable to procure at Eastport aforesaid her needed supply of bait for the prosecution and completion of the said voyage, she proceeded as she lawfully might under said treaty, statutes, and regulations and proclamations and the laws in force on that behalf to the said Annapolis Basin and entered the same and while there she purchased and paid for several barrels of bait, to wit, herrings wherewith to enable her to prosecute her said fishing voyage with success and complete the same as she had a lawful right to do and at and during all the time and times in this paragraph stated and at and prior to said sixth of May and subsequently said vessel held and had a license to fish duly granted to her under the laws of said United States of America, and he further alleges and says that all the acts, matters and

crew or either of them about the time alleged and within said basin any act or thing whatever; and he denies that they in and with said vessel were engaged in said paragraph within said three marine miles of the said several provisions of the said several laws of the United States and that they were of full force and effect.

David J. Adams and the crew of said vessel were not in and with said vessel at the time named in said paragraph or at any other time or place or that the same or that the same was authorized by any law authorizing said vessel to fish.

Peter A. Scott, or that the vessel named in said paragraph or at any other time or place or that the same or that the same was authorized by any law authorizing said vessel to fish.

David J. Adams and the crew of said vessel were not in and with said vessel at the time named in said paragraph or at any other time or place or that the same or that the same was authorized by any law authorizing said vessel to fish.

David J. Adams and the crew of said vessel were not in and with said vessel at the time named in said paragraph or at any other time or place or that the same or that the same was authorized by any law authorizing said vessel to fish.

herein set out as done or omitted to be done by said master, officer or crew of said vessel, were lawful and were not in contravention of law, statute, regulation, order, treaty, or convention whatever; and the owner further avers and says that said bait was bought as hereinbefore set out with the intention and for the purpose of being used in fishing on the said Western Banks and outside of all said bays, harbors and said three marine miles and outside of all waters prohibited by said convention and not elsewhere.

10. With reference to the statements contained in the several paragraphs of said petition numbered from 9 to 16 each inclusive, said owner avers and says that the several statements and allegations therein contained in respect to one and the same matter or cause of action and not in respect to different; he denies the truth of the several statements contained in said paragraphs and every of them, subject nevertheless to the following;—that if by the several allegations contained in said petition as to preparing to fish it was intended to allege that said master, officers and crew of said vessel or either of them did prepare within said three marine miles to take fish without said three marine miles and in waters not prohibited by said convention and by said acts either of them as in said several paragraphs particularly set out, the same is true to the extent and in the manner hereinbefore set out and otherwise true.

11. And he further denies that on or about the said sixth day of May subsequently said *Aldon Kinney*, master of the said ship or vessel *David J. Adams*, and the officers and crew thereof, or either of them, in and with said vessel *David J. Adams* or either in or with said vessel within said basin of Annapolis or within three marine miles of any of the coasts, bays, or creeks and harbors alleged in said petition fish for fish, take fish, dry fish, cure fish or was found fishing, or was found preparing or did prepare within said three marine miles or elsewhere, to fish within three marine miles of any of the bays, coasts, creeks or harbors alleged or referred to in said petition.

12. And he further says that the said basin of Annapolis, as described in said petition, being the place where said master purchased the bait hereinbefore set out was at the time when he purchased the bait a commercial port in the Dominion of Canada and a port of the Dominion of Canada established by law in accordance with the customs acts and other statutes of said Dominion into which vessels were lawfully permitted to freely enter and from which they were permitted to freely depart subject only to the provisions of the customs acts and other general regulations of the ports provided in that behalf; that so much of said convention entered into on the 20th. day of October 1818, as provided that fishermen should be admitted to enter bays and harbors for the purposes therein set out, has relation to bays and harbors generally and is not inconsistent with the matters in this article alleged and with reference to said basin of Annapolis and all other bays and harbors, constituted ports as aforesaid, there did not exist at any time in May 1886, or subsequently either in the laws of Great Britain and Ireland or in those of the Dominion of Canada or in any treaty or convention any prohibition against the entry into said port or ports in the name of peace of any vessels whatsoever belonging to a friendly nation, and lawfully enrolled, licensed or registered according to laws of said friendly nation, for the purpose of obtaining necessary or reasonable supplies for her voyage, and occupation in which she may be lawfully engaged nor against said vessels having so entered providing themselves with all necessary and reasonable supplies for their lawful voy-

ages and occupations and departing with the same; and that the United States of America was at all the times alleged in said petition, to be at peace with Great Britain and Ireland and all her dominions and on terms of amity and friendship with all the same.

12. And said owner further says that pursuant to the proclamation of the King of Great Britain and Ireland, concurred in by the privy council bearing date on or about the sixth of November A. D. 1830, and which proclamation was issued in pursuance of appropriate legislation in that behalf, ships of and belonging to the United States of America were authorized freely to export goods from the dominions of Great Britain and Ireland including what is now the Dominion of Canada to be carried to any foreign country whatever; and by subsequent legislation of the Parliament of Great Britain and Ireland all vessels of the United States of America lawfully registered, enrolled or licensed in accordance with the laws of said United States during all of said month of May 1886, & subsequently as to voyages from and to ports and places in the dominions of Great Britain and Ireland including the Dominion of Canada and as to trading at such ports or places as incidental to such voyages were made subject to the same prohibitions and restrictions and to no other to which ships and vessels of Great Britain and Ireland engaged in like voyages or trading were then subject, that said ship or vessel, *David J. Adams*, and her master, officers and crew were thereby fully authorized and permitted to purchase bait under the circumstances and for the purposes hereinbefore set out at the time and place when said master purchased the same.

Dated the ——— day of July 1886.

(Indorsed:) Copy. The Queen v. The *David J. Adams*. Defence filed Aug. 7, '86. Filed.

IN THE VICE-ADMIRALTY COURT AT HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
versus
 THE SHIP OR VESSEL "ELLA M. DOUGHTY" } No. 473.
 and her cargo, defendants.

Action for forfeiture. Writ issued May 20th 1886.

The defendants, the owners of said vessel, to wit: Warren A. Doughty and others say as follows,—

1. That there was not at the time of the seizure of said vessel or any time after her sailing from Portland, in the State of Maine, as hereinafter set out, any cargo aboard said vessel except supplies suitable and necessary for the fishing voyage hereinafter set out, and except a certain amount of fresh halibut, between fifteen hundred and two thousand pounds, caught by the master and crew while aboard of said vessel on the western banks about twenty miles south of Sable island in water where said vessel and the master and crew thereof were lawfully entitled to fish for said halibut.

2. They admit the allegations set forth in the first paragraph of the petition filed herein as to the making and signing of the treaty or convention of October 20th 1818, therein referred to. But for greater certainty they crave leave to refer to said treaty when produced at

same; and that the United States of America and Great Britain made A. D. 1800, and especially article third thereof.

As to second paragraph of said petition the defendants admit the passage as therein alleged of a certain act of the Parliament of Great Britain and Ireland in the fifty ninth year of the reign of George Third, chapter 38 of acts of said Parliament and they also admit as therein alleged the passage of the act of the Parliament of Great Britain and Ireland referred to in paragraph three of said petition and also the passage by the Parliament of Canada of the several acts referred to in the fourth paragraph of said petition. But they deny that either of said acts prohibited the purchase of bait or ice as alleged in said petition, or that there ever have been any order or orders in council, regulations, directions or instructions as provided in said act of Parliament passed in the fifty ninth year of George the Third prohibiting the purchase of bait or ice as alleged in said petition or any act either of the Parliament of Great Britain and Ireland or of the Parliament of the Dominion of Canada, or any order or orders in council, regulations, directions or instructions imposing penalty of forfeiture under or by virtue of which said vessel, the *Ella M. Doughty*, is liable to forfeiture for the purchase of bait or ice or for entering said bay or harbor of St. Ann's for the purchase of bait or ice as alleged in said petition.

Wit: Warren A. Doughty.

AT HALIFAX.

No. 473.

1886.

Wit: Warren A. Doughty.

Seizure of said vessel or any part thereof in the State of Maine, as hereinbefore alleged, except supplies suitable and necessary for the outfit, and except a certain quantity of food and two thousand pounds of said vessel on board of said vessel on the island of Sable in waters thereof were lawfully entered.

The first paragraph of the petition of the treaty or convention. But for greater certainty when produced at the

of this action. And they further say that they submit and will shew that said treaty is to be construed in connection with the treaty between the United States of America and Great Britain made A. D. 1800, and especially article third thereof.

As to second paragraph of said petition the defendants admit the passage as therein alleged of a certain act of the Parliament of Great Britain and Ireland in the fifty ninth year of the reign of George Third, chapter 38 of acts of said Parliament and they also admit as therein alleged the passage of the act of the Parliament of Great Britain and Ireland referred to in paragraph three of said petition and also the passage by the Parliament of Canada of the several acts referred to in the fourth paragraph of said petition. But they deny that either of said acts prohibited the purchase of bait or ice as alleged in said petition, or that there ever have been any order or orders in council, regulations, directions or instructions as provided in said act of Parliament passed in the fifty ninth year of George the Third prohibiting the purchase of bait or ice as alleged in said petition or any act either of the Parliament of Great Britain and Ireland or of the Parliament of the Dominion of Canada, or any order or orders in council, regulations, directions or instructions imposing penalty of forfeiture under or by virtue of which said vessel, the *Ella M. Doughty*, is liable to forfeiture for the purchase of bait or ice or for entering said bay or harbor of St. Ann's for the purchase of bait or ice as alleged in said petition.

That as to the several acts of the Parliament of the Dominion of Canada referred to in the fourth paragraph of said petition the defendants aver and say that the Parliament of Great Britain and Ireland did not legislate in reference to the subject matter of said treaties and convention by the said act of the fifty ninth year of George the Third, which act remains in full force and by its terms necessarily is inconsistent with and necessarily excludes any legislation of the Parliament of the Dominion of Canada concerning the subject matter thereof, and all regulations whatever in relation thereto except as expressly provided in said act of Parliament of Great Britain and Ireland. And all legislation of the Dominion of Canada is unauthorized, null and void so far as the same relates or assumes to relate to the matter set out in said petition or to said vessel, *Ella M. Doughty*.

5. With reference to the fifth article of said petition they admit that said convention and the said several acts by the Parliament of Great Britain and Ireland hereinafter mentioned were and still are in full force and effect, save and except that additional privileges have been given to vessels of the United States and other foreign vessels by subsequent statutes and regulations hereinafter referred to.

6. With reference to paragraph six of said petition they admit that the bay and harbor of St. Ann's are situated in the county of Victoria and province of Nova Scotia, and they admit the further statements in said sixth paragraph contained.

7. They admit the statements contained in the seventh paragraph of said petition and they also allege that in accordance with the laws of the United States of America said ship or vessel, *Ella M. Doughty*, was at the time and times mentioned in said paragraph not only licensed and permitted to carry on the fisheries as therein alleged but was in accordance with the Revised Statutes of the United States of America, section 4364, licensed and permitted so far as the said United States could lawfully do the same to touch and trade at any port foreign to the said United States in such manner as may not be inconsistent with the laws and regulations of said foreign port.

8. With reference to the statements contained in the eighth paragraph of said petition they admit that on or about the 11th day of May in the year of our Lord 1886, the said Warren A. Doughty, the master, and the officers and crew of the said ship or vessel, *Ella M. Doughty*, did with the said ship or vessel *Ella M. Doughty* enter into the bay and harbor of St. Anna aforesaid and within three marine miles of the coast of said bay and harbor of St. Anna and within three miles of the coast of these portions of the Dominion in America described in said paragraph; but they deny that the said master, officers and crew, entered said bay and harbor and within said three marine miles or either of them in or with the vessel aforesaid or otherwise for the purpose of procuring any bait or ice whatever. And they further deny that said master, officers and crew, or either of them, in or with said ship or vessel did at or about the time named in said paragraph or ever, enter said harbor and bay and within said three marine miles or either for any purpose other than of obtaining shelter. But they admit that said master, officers and crew, entered said bay and harbor in and with the said vessel on or about the 11th day of May as will be hereinafter particularly set out and did then and there procure by purchase and by payment of money therefor and in no other way, bait to wit: herrings, wherewith to fish in the open sea and outside and beyond the dominions and limits aforesaid and outside of said three marine miles and to fish therewith in no other place than in said open sea without and beyond said dominion and said three marine miles. And they deny that said master, officers and crew, or either of them, did procure by purchase or otherwise any ice within said bay or harbor or within said three marine miles.

And they deny that said master, officers and crew, or either of them in or within said vessel, or said vessel did at or about the time alleged in said paragraph of said petition or subsequently and within said bay and harbor of St. Anna, or within said three marine miles, any act or thing whatever contrary to the provisions of the said convention; and they deny that said master, officers and crew, or either of them, in or within said vessel or said vessel did at or about the time alleged in said paragraph or subsequently in said bay or harbor of St. Anna, or within said three marine miles, anything whatever contrary to the provisions of the said several acts or any of them even if said acts and all of them were of full force, validity and effect.

And they further deny that the said vessel *Ella M. Doughty*, and the property aboard her or either of them were seized within three marine miles of the coast or shores of the said bay and harbor of St. Anna or elsewhere by Donald McAuly and Lauchlin G. Campbell, or by either of them, or that they or either of them were seized at or about the time named in said paragraph at or about the place therein named or at any other time or place by any person authorized to seize the same or that the same were, or either of them was ever seized under any law authorizing said seizure.

And they further deny that said Donald McAuly and Lauchlin G. Campbell, or either of them, were officers of the customs of Canada or alleged in said petition or were duly authorized by law to seize said vessel and cargo. And they further deny that said vessel or cargo were liable as alleged in said paragraph to forfeiture for breach or violation of said convention and said several acts or either of them.

And further answering said eighth paragraph they say that said vessel, *Ella M. Doughty*, under command of Warren A. Doughty, with crew of 11 men lawfully sailed from Portland, in the State of Maine, on the 26th day of April in the year of our Lord 1886, bound on a halibut

ed in the eighth paragraph of the 11th day of May in the month of August, the master, and the crew of said vessel, *Ella M. Doughty*, did unlawfully enter into the bay and harbor of St. Ann's three miles of the coast of Maine described in said paragraph, and there, by officers and crew, entered said bay and harbor three marine miles or either more or less than three marine miles for the purpose of purchasing herring; and they further deny that said master, officers and crew, with said ship or vessel did lawfully enter, or ever, enter said harbor or bay, or either for any purpose other than to permit that said master, officers and crew, and with the said vessel, to purchase hereinafter particularly mentioned fish—namely, herring, and to rebase and by payment of money to obtain the dominions and limits thereof, and to fish therewithin, at and beyond said dominions and limits; and they deny that said master, officers and crew, did purchase or otherwise acquire said fish by purchase or otherwise within three marine miles of the coast of Maine, and did crew, or either of them, do so, or about the time alleged, or within said bay or harbor three marine miles, any act or thing contrary to the said convention; and they further deny that either of them, in and about the time alleged in said paragraph, was the proprietor of St. Ann's, or within said bay or harbor, contrary to the provisions of the acts and all of them, which are recited in said acts.

The vessel *Ella M. Doughty*, and her cargo, were seized within three marine miles of the bay and harbor of St. Ann's, on the 11th day of May, 1886, by G. Campbell, or by either of them, and they seized at or about the time alleged therein named or referred to, and they refused to seize the same or either of them, after seized under any law of the United States.

McAuly and Lauchlin G. Campbell, customs officers of Canada at the port of St. Ann's, acting by law to seize said vessel and cargo, refuse seizure for breach or violation of the laws of the United States, or either of them.

And they say that said vessel was owned by John A. Doughty, with a license from the State of Maine, on the 11th day of May, 1886, bound on a halibut

ing voyage to the Western Banks at a place or places not within the Union aforesaid, nor within said three marine miles and not within the limits specified and defined in the said first article of the said convention; at a place or places where she was lawfully entitled to fish for halibut as aforesaid, in accordance with the laws of the United States of America and in accordance with said convention and said treaty of 1793, and the laws of nations. That at the time of her said departure upon said voyage she was well and properly fitted and equipped with a sufficient quantity of ice and bait and all other supplies for the purposes of her said intended voyage. That she proceeded upon her said intended voyage and arrived at the banks aforesaid and anchored thereon at a place not in any of the waters prohibited by the said convention and she was lawfully captured and took on board a certain quantity of halibut to wit: from 1,500 to 2,000 pounds. That thereafterwards she undertook to move for the purpose of lawfully continuing her fishing voyage to the northern banks and to waters not prohibited by said convention, but to waters where she was lawfully entitled to fish under said laws of the United States of America and under said treaty and convention as well as by the laws of nations. That in attempting to reach the same she encountered large fields of heavy ice and was forced by the same several times out of her course and into the harbor of Louisburg and thence and finally in or about the 11th day of May, after making in vain every reasonable effort to accomplish headway against such ice, her safety being threatened thereby, she was forced by the same and for her safety as aforesaid to enter and did enter St. Anna bay for the purpose of obtaining shelter from said ice and for no other purpose all of which she was lawfully and of right entitled to do. That on the morning of the 12th of said May being the first suitable opportunity therefor, she departed from said bay and attempted to proceed upon her voyage for the purpose of fishing at the place last hereinbefore set out where she was lawfully entitled to fish and during said last named day and before she had proceeded far on said voyage she was again, by said heavy fields of ice, after again making in vain every reasonable effort to proceed against the same and finding her safety endangered, forced to return and did therefore return into said bay of St. Anna to seek shelter from said ice and for no other purpose all of which she was lawfully entitled to do. That on the thirteenth day of said May said ice having apparently moved off from the coast and bay said vessel again departed for the purposes aforesaid and again was compelled by the said ice under the same circumstances hereinbefore recited to return for shelter to said bay above the inner lighthouse and into the harbor of Englishtown or St. Anna, all of which was rendered necessary for her safety and for the purpose of shelter. That thereafterwards she remained for some time to wit: 4 days, until her alleged seizure in said harbor of St. Anna solely because said fields of ice continued as hereinbefore described and she was unable for the reason hereinbefore set out to proceed in safety upon her voyage as aforesaid; that her resorting to each of the several times hereinbefore described to the harbors of Louisburg and Sidney and said harbor and bay of St. Anna was solely through stress of weather and by compulsion of said fields of ice because she was unable to proceed with safety against the same and because resorting to said harbors and bay and each of them at the times heretofore set out was required for her safety and she remained therein and in each of them for shelter as hereinbefore set out and for no other purpose whatever.

That by reason of being compelled to resort to and remain in harbors and bay and the delay ensuing in consequence thereof which had been procured and put aboard said vessel at Port hereinafore stated was damaged and said master upon discovery of said damage which he first did on or about the 12th day of May said was apprehensive that the same might not serve for his intended voyage as aforesaid:—That on the 12th day of May aforesaid and in the bay aforesaid and about to proceed to sea as aforesaid came along side of said vessel and offered to sell to said master, wit: herrings; that thereupon the master of said schooner, his bailor, old from the delays aforesaid, purchased in good faith to make good repair such injury, from said boat, about ten barrels of herrings and for the same the fair value thereof all of which he had a lawful right to do.

And the said owners further say that they except as specified by them in answer to paragraph eight, none of the allegations in paragraph eight are untrue and they specifically deny each and every of the same. And they further allege that all the acts, matters and things herein set out as done or omitted to be done by said master, officers or crew of the said vessel, or either of them, or by said vessel were and were not in contravention of any law, statute, regulation, treaty, or convention whatever.

The said owners further say that the said bait was bought by the master of said vessel to be used as hereinbefore set out in fishery on the banks outside all said bays, harbors and said three marine miles and outside of all waters prohibited by said convention and nowhere.

9. With reference to the statements contained in the several paragraphs of said petition numbered from nine to 16 each inclusive, the said owners suggest that the several statements and allegations therein contained are in respect to one and the same matter or cause of action and are not other or different and except as hereinbefore specifically admitted they deny the truth of the several statements contained in said paragraphs and every of them; subject nevertheless to the following: that if by the said several allegations contained in said petition it appears that if by the said several allegations contained in said petition preparing to fish it was intended to allege that said master or crew of said vessel or either of them did prepare within said three marine miles to take fish without said three marine miles and in waters prohibited by said convention and by said acts or either of them, said several paragraphs particularly set out, the same is true to the intent and in the manner hereinbefore set out and not otherwise to the intent.

10. And they further deny that at any time during the said month of April and May 1886, said Warren A. Doughty, master of the said vessel or vessel *Ella M. Doughty*, and the officers and crew thereof, or either of them in and with the said vessel *Ella M. Doughty*, or either of them with said vessel did within said bay or harbor of St. Ann's or within three marine miles of any of the coasts, bays or creeks and harbors alleged in said petition, fish for fish, take fish, dry fish, cure fish, found fishing or was found preparing or did prepare within said three marine miles or elsewhere to fish within three marine miles of the bays, coasts, creeks or harbors alleged in said petition.

11. And they further say that the said bay and harbor of St. Ann's as described in said petition, being the place where said master or crew chased the bait as hereinbefore set out, was at the time when said master or crew chased the bait aforesaid, a commercial port in the Dominion of Canada and a part of the Dominion of Canada, established by law in accordance with the provisions of the Act in that behalf made.

resort to and remain in said bay in consequence thereof the bait was set out on said vessel at Portland as directed by said master upon discovering that on the 12th day of May aforesaid the vessel could not serve for his intended purpose on the day of May aforesaid and while on the way to sea as aforesaid a boat was sent to sell to said master, bait to the value of said schooner, his bait being in good faith to make good and deliver ten barrels of herrings and paid for which he had a lawful right to

at they except as specifically alleged, none of the allegations specifically deny each and all the facts, matters and things alleged by said master, officers and crew, or by said vessel were lawful by law, statute, regulation, order,

said bait was bought by the vessel before set out in fishing on the bay and said three marine miles from the shore as provided in said convention and not else-

contained in the several paragraphs 1 to 10 each inclusive, said facts and allegations therein contained matter or cause of action, and none of them were specifically admitted, nor were they contained in said petition, notwithstanding the following to wit: That said petition as to the facts that said master, officers and crew did prepare within said three marine miles and in waters not within said bay or either of them as in and about, the same is true to the extent and not otherwise true.

At any time during the said months of April and May 1886, master of the said ship *Ella M. Doughty*, and crew thereof, or either of them, did prepare within said three marine miles of any of the bays or creeks and harbors aforesaid, fish, dry fish, cure fish or was did prepare within said three marine miles of any of the bays or creeks and harbors aforesaid in said petition.

That the bay and harbor of St. Anns, in the Dominion of Canada, was the place where said master purchased bait at the time when he purchased in the Dominion of Canada, established by law in accordance

with the customs acts and other statutes of said Dominion into which vessels were by law permitted to freely enter and from which they were permitted to freely depart subject only to the provisions of the customs acts and other general regulations of the ports provided in that behalf; that so much of said convention entered into on the 20th day of October 1818, as provided that fishermen should be admitted to enter bays and harbors for the purposes therein set out, has relation to bays and harbors generally and is not inconsistent with the matters in this article alleged; that with reference to said bay and harbor of St. Anns and all other bays and harbors constituted ports as aforesaid there did not exist in the said months of April and May 1886, either in the laws of Great Britain and Ireland or in those of the Dominion of Canada or in any treaty or convention any prohibition against the entry into such port or ports, in the time of peace of any vessels whatsoever belonging to a friendly nation, and lawfully enrolled, licensed or registered according to the laws of said friendly nation, for the purpose of obtaining necessary or reasonable supplies for her voyage and occupation in which she may be lawfully engaged; not against such vessels having so entered providing themselves with all necessary and reasonable supplies for their lawful voyages and occupations and departing with the same; and that the United States of America was at all times alleged in said petition to wit: "During the said months of April and May 1886, at peace with the Queen of Great Britain and Ireland and with all her dominions and on terms of amity and friendship with all the same."

12. And said owners further say that pursuant to the proclamation of the King of Great Britain and Ireland concurred in by the privy council bearing date the sixth of November A. D. 1830, and which proclamation was issued in pursuance of appropriate legislation in that behalf, ships of and belonging to the United States of America were authorized freely to export goods from the Dominions of Great Britain and Ireland, including what is now the Dominion of Canada, to be carried to any foreign country whatever; and by subsequent legislation of the Parliament of Great Britain and Ireland all vessels of the United States of America lawfully registered, enrolled or licensed in accordance with the laws of said United States during all of said months of April and May 1886, as to voyages from and to ports and places in the Dominion of Great Britain and Ireland, including the Dominion of Canada, and as to trading at such ports or places were, as incidental to such voyages, made subject to the same prohibitions and restrictions, and to no other, to which ships and vessels of Great Britain and Ireland engaged in like voyages or trading were then subject,—so that said ship or vessel *Ella M. Doughty*, and her master, officers and crew, were thereby fully authorized and permitted to purchase bait under the circumstances and for the purposes hereinbefore set out at the time and place when said master purchased the same.

IN THE VICE-ADMIRALTY COURT AT HALIFAX.

BEFORE CHIEF JUSTICE McDONALD.

HER MAJESTY THE QUEEN, PLAINTIFF,
 vs.
 THE SHIP OR VESSEL "ELLA M. DOUGHTY"
 and her cargo, defendants.

HALIFAX, June 2, 1887.

WARREN A. DOUGHTY, called by the defense, sworn and testified
 follows:

Examined by Mr. MEAGHER.

- Q. How old are you captain?—A. Thirty-seven.
 Q. What is your occupation?—A. Fisherman.
 Q. How long have you been engaged in the fishing business?—
 Twenty three or twenty four years.
 Q. What position on board a fishing vessel do you hold?—A. Master.
 Q. How long have you filled that position?—A. About thirteen years.
 Q. In what class of fishing have you been principally engaged?—
 cod and halibut.
 Q. Fitting out where?—A. Portland, Maine.
 Q. What vessel were you in command of during 1886?—A. The *Ella M. Doughty* of Portland.
 Q. During one of the voyages of last year she was seized at sea
 time?—A. Yes.
 Q. What time on that voyage did you leave Portland, what month?
 A. April the twenty sixth.
 Q. What class of fishing voyage was it?—A. Halibut fishing.
 Q. Where?—A. On the Western banks.
 Q. How far from the nearest part of Nova Scotia are the Western
 banks, roughly speaking?—A. The nearest land is about eighty
 ninety miles from Nova Scotia proper.
 Q. How far from Sable Island?—A. About twenty four miles,
 the south western part of the banks is nearly one hundred miles.
 The COURT. The Western banks are between the main land of
 United States and Sable Island?—A. Yes.
 Mr. MEAGHER. Q. How near Sable Island is the nearest part of
 banks?—A. About twenty four miles.
 Q. What were you, hand-lining or trawling?—A. Trawling.
 Q. Had you any hand lines on board?—A. No sir, we had not.
 Q. Outside of your fishing supplies what cargo had you on board?
 A. Nothing.
 Q. About how long have you been engaged in halibut fishing
 trawling on the banks?—A. About three years.
 Q. As master, altogether?—A. As master the last three years.
 Q. In your experience is it usual for vessels that fit out on a halibut
 trawling voyage to fish in shore?
 (Objected to and excluded.)
 Q. Where was the first place you anchored?—A. On the Western
 banks.
 Q. Did you anchor more than once on the Western banks at sea?
 time?—A. No sir.
 Q. About how far were you from Sable island?—A. About twenty
 four miles.

AT HALIFAX.

DONALD.

HALIFAX, June 2, 1887.

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—A. About thirteen years

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red?—A. On the Western

the Western banks at the

island?—A. About twenty

Q. What day of the week did you leave Portland?—A. Saturday.

Q. On the Saturday following you anchored on the banks?—A. Yes.

Q. What did you do after anchoring?—A. Set our trawls.

Q. How many times on that voyage did you set your trawls for fish-

g up to the time you were seized?—A. Twice.

Q. Where did you set them the second time?—A. In the same place.

Q. You didn't change your anchorage ground; on what day did you

t them the second time?—A. The same day.

Q. Did you take in any of the trawls?—A. Very few.

Q. What length of time did you remain on the Western banks on

at occasion?—A. Only one day; I only remained that Saturday.

Q. At the time you were seized you had some fish on board; what

nd were they?—A. Halibut, cod, cusk and hake.

Q. Where were they caught?—A. On the Western banks.

Q. Between the interval you have spoken of, the Saturday on which

n set your trawls twice, and the time of your seizure, what had you

ne in the way of fishing or trying to fish?—A. None.

Q. How far from the ship were the trawls set?—A. All around the

ip, close by.

Q. When did you leave the Western banks?—A. On Saturday the

st day of May.

Q. That was the day you had your trawls set?—A. Yes.

Q. And you left for where?—A. For the purpose of fishing north.

Q. Can you give the place where you were going to?—A. Saint Pauls

nk.

Q. Had you ever been on Saint Pauls bank before?

Mr. GRAHAM. I shall object to this witness giving any evidence of

s intention.

The COURT. I think it is reasonable for him to state what he left the

hing ground for. You can ask him if he left to get bait. I think it

a proper question.

Mr. MEAGHER. Q. Had you ever been on the Saint Pauls bank be-

re?—A. No sir.

Q. Had you any person on board that had been?—A. Yes Mr. Law-

nce.

Q. Now state shortly what followed after leaving the Western banks;

ere was the next place you touched at?—A. Louisburg.

Q. What day was that?—A. Monday.

Q. Were you into Louisburg?—A. Yes.

Q. Why did you go in there?—A. On account of the ice, it drove

in.

Q. That would be the third of May?—A. Yes.

Q. How long did you remain there?—A. Until Thursday following.

Q. Why did you remain there so long?—A. On account of the ice.

Q. Why on account of the ice?—A. Because we couldn't get out.

Q. You were kept there by the ice until the Thursday following; then

at did you do?—A. Started for Saint Pauls banks.

Q. Did you get there?—A. No we were forced into Sidney by the ice.

Q. On what day did you get into Sidney?—A. Friday.

Q. Sidney or North Sidney?—A. North Sidney.

Q. How long did you remain there?—A. Until Monday morning.

Q. Why didn't you leave there in the mean time?—A. We couldn't

account of the ice and weather.

Q. You left there on Monday morning?—A. Yes.

Q. Where did you leave for then?—A. Saint Pauls banks.

Q. Go on and describe the voyage and where you got to next.—A. We got up to Bear Head that night.

Q. Where is that?—A. Up above Ingonish.

Q. What occurred there?—A. We anchored there that night; it was blowing heavy with ice outside of us and we laid there until the next morning.

Q. How far away from you was the ice at Bear Head?—A. About two or three miles.

Q. What was its character?—A. Heavy.

Q. How was the wind that night you were anchored at Bear Head?—A. Northwest.

Q. That was off shore?—A. Yes.

Q. How was it?—A. It blew heavy that night.

Q. When did you leave Bear Head?—A. Tuesday morning.

Q. Where for?—A. Saint Paul's bank.

Q. What followed after that?—A. We went as far as we could go off shore for ice. The wind had changed to the north east and pressed the ice in shore and it forced us back again.

Q. Where did you go then?—A. To Saint Anne's.

Q. Why did you go into Saint Anne's?

(Objected to.)

The COURT. I think he may give the reason, if he was driven in by stress of weather.

Mr. GRAHAM. The proper question would be to ask if there was stress of weather.

Mr. MEAGHER. Q. What was the reason you went into St. Anne's?

—A. On account of the ice; we couldn't get along.

Q. When did you go in there?—A. Tuesday afternoon or Tuesday about noon.

Q. Do you remember the day of the month?—A. No sir, I do not.

Q. Where did you anchor?—A. Outside of the harbor light.

Q. When did you next leave there?—A. The next morning.

Q. How was the weather the next morning?—A. Fair and the wind south west.

Q. How far did you get that day?—A. About seven or eight miles.

Q. Where were you proceeding to?—A. Started for St. Paul's bank.

Q. Did you get several miles out on that voyage?—A. Yes.

Q. What occurred when you got several miles out?—A. We got as far as we could go for ice and had to come back.

Q. Where did you go then?—A. Up into the harbor of St. Anne's.

Q. What was the character of the weather when you got back?—A. It was raining and the wind canted out.

Q. When did you next leave there again?—A. Early Thursday morning.

Q. For where?—A. St. Paul's bank.

Q. How far did you get?—A. Down as far as Bird island.

Q. What occurred then?—A. The wind died away and we got as far as we could for ice and we laid along side of the ice; it was calm. The ice was heavy. We laid there until most night then the wind breezed up and we ran back.

Q. Breezed up from what direction?—A. About east north east. We ran back into the harbor.

Q. What time did you get back into the harbor?—A. Just about night.

Q. What was the condition of things in the harbor the next morning?—A. It was full of ice.

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Q. Much or little?—A. It kept coming in all the time.

Q. Did you have to do anything while in the harbor in consequence of the ice?—A. We had to shift over on the northern side.

Q. This was Thursday evening when you got back; did you attempt to go out in the interval between that time and the time the vessel was sized?—A. No sir.

Q. Why not?—A. We couldn't get out for ice.

Q. About how long does a voyage usually last?—A. From three to four weeks.

Q. About how long do you usually remain on the banks trawling?—A. About two weeks.

Q. What sort of bait do you use on these trawling voyages?—A. Herring, mackerel or any other kind of fish we can get.

Q. What kind of a bait did you take on that voyage?—A. Herring.

Q. What quantity?—A. About ten thousand.

Q. What quantity would be ordinarily sufficient for a voyage of that kind?—A. Anywhere from five to fifteen or twenty barrels.

Q. Do you know how many herring ordinarily fill a barrel?—A. No sir, I do not.

Q. What fish were they that you had?—A. Frozen herring.

Q. Any name for them?—A. No sir.

Q. Is that the only kind of bait you used while on the banks?—A. No sir, we used any kind of fish that we caught on the trawls.

Q. On Wednesday morning, the first Wednesday, you were up the bay of St. Anne's at anchor; do you remember of any person coming to the vessel?—A. Yes.

Q. While you were at St. Anne's—I am speaking now of the bay and harbor—what efforts did you personally make, if any, to inquire for or obtain bait?—A. None sir.

Q. Did you send anybody to make any inquiries for bait?—A. No sir.

Q. You say on Wednesday morning a boat came alongside; state what took place between the party and yourself.—A. A boat came alongside with herring and asked if I wanted to buy.

Q. More than one man in the boat?—A. No sir.

Q. Did you know any person down there?—A. No sir, I didn't.

Q. Did you know the name of any person from whom you got bait?—A. No sir.

Q. State what took place between you and this party.—A. He asked me if I wanted to buy any bait. I told him I didn't know as I did. I asked him what he asked for his bait. Then I went into the hold and looked at the bait and saw how it was.

Q. How did you find it?—A. It was getting soft.

Q. What effect on the bait has its getting soft?—A. It spoils it; fish won't take it.

Q. You say you found the bait soft, what did you do then?—A. I told him I would take the bait.

Q. What further conversation did you have with him?—A. I don't remember.

(Mr. Meagher began to read from a deposition when Mr. Graham objected.)

The COURT. What do you propose to ask him Mr. Meagher?

Mr. MEAGHER. The witnesses were examined before with a view of showing that they took the bait from the side of the vessel away from the town, and I want to show that it was a matter of convenience of taking the fish in.

Q. From what side of the vessel was the fish taken on board?—A. On the starboard side.

Q. To what side of the vessel did the boat first come with the bait?—A. To the port side.

Q. Why did he come around to the starboard side?—A. Because it was more convenient to get the bait in; our dories were on that side and we had to put the bait in on the starboard side.

Q. How much more bait did you buy while there, the entire quantity?—A. About ten or twelve barrels.

Q. On what days did you buy?—A. Wednesday and Thursday.

Q. The day this man came and the day following?—A. Yes.

Q. Did you buy them all from one party or different parties?—A. Different parties.

Q. Where were you when the boats first came to you with bait on that Thursday morning?—A. Got out through the passage from the harbor into the bay.

Q. The boats made fast to you did they not?—A. Yes.

Q. Did you take the bait from them as soon as they came alongside and made fast or afterwards?—A. Afterwards.

Q. Why was that done?—A. Because I told them I had no money to buy bait and couldn't pay what they asked.

Q. You afterwards did buy?—A. Yes.

Q. Where did you get the money for that purpose?—A. From the crew.

The COURT. I should suppose a master must be pretty hard pressed for bait to borrow money from the crew.

Mr. MEAGHER. He was, my lord.

The COURT. I understood him to say he had a plenty of bait.

Mr. MEAGHER. So he had but it was spoilt.

Q. How far out did the boats continue with you before you got the bait from them?—A. It might have been a half a mile.

Q. Half a mile from where?—A. From the entrance of the harbor.

Q. Is it settled on both sides of the harbor?—A. Yes.

Q. Much difference in the character of the settlement as to the thickness of the settlement?—A. No.

Q. One of the witnesses states this, "When we went on the vessel she went out some distance with us and then ranged up and tacked in shore. We didn't leave the vessel opposite our own place because the captain told us not to leave until he got the herring. He didn't take them then because he didn't like the people on shore to see what he was doing."

(Objected to by Mr. Graham.)

The COURT. The witness is only giving the motive of the captain's conduct; he is not giving any conversation. Mr. Meagher may ask this witness if he had any such reason.

Mr. MEAGHER. Q. What was the reason for not taking the fish immediately when he came alongside?

The COURT. He has given that.

Mr. MEAGHER. Q. Why did you tack in shore?

The COURT. If the witness stated that he tacked in shore for a purpose but does not say that the captain told him the purpose, the testimony is valueless.

Mr. MEAGHER. The witness does say "We didn't leave the vessel opposite our own place because the captain told us not to leave until he got the herring; he didn't take them then because he didn't like the people on shore to see him".

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The COURT. I will allow you to ask him if he gave any reason for not taking the herring there.

Mr. MEAGHER. Q. Did you give any reason to any of the men at that time that came from the shore with the boat, why you didn't take the bait at that time?—A. No sir.

Q. Did you keep on out or did you return?—A. We had to tack.

Q. Why?—A. Because so as to stand across on the eastern side of the bay.

Q. In relation to that tack, when did you let them off?—A. When we tacked again to stand out of the bay.

Q. When you were going on that tack to stand out of the bay you let them off?—A. Yes.

The COURT. What side of the bay did you cast off the fishermen's boats that you bought of?—A. On the south east side.

Mr. MEAGHER. Q. You tacked from the north west side of the bay to the south east?—A. Yes.

Q. When you got there you cast off?—A. Yes.

Q. Where did they go?—A. They went ashore on the south east side.

Q. Some of the witnesses stated that you gave them fresh halibut; where were those halibut caught?—A. On the Western banks.

Q. Do you remember another vessel being in the bay while you were there?—A. Yes.

Q. Do you remember of the captain coming on board?—A. Yes.

Q. You had a conversation with him?—A. Yes.

Q. He states that you called him down in the forecabin and asked him if he thought there was any danger in buying bait there and if there was any bait to be got; that he told you there was danger because the officer on shore was a very particular man about his duties and if found buying bait there you would be seized immediately. Did any such conversation as that take place between you?—A. No, sir.

Q. Did you take him into the forecabin?—A. Yes sir.

Q. Who were present, do you remember?—A. No sir.

Q. How did you happen to go into the forecabin?—A. I was showing him around the vessel.

Q. Do you remember Mr McAuley coming on board and seizing the vessel?—A. Yes.

Q. He states that you gave him the names of the men from whom you bought the bait; is that correct?—A. No sir, I didn't know the name of a man there.

Q. What was done with the ten or twelve barrels of bait that you bought?—A. We put it on ice the same morning that it was bought.

Q. Where were you going with that bait; where were you going to use it for the purpose of your voyage.

(Objected to. Admitted.)

A. On the bank of St. Paul.

Q. After buying the bait and putting the ice on it what, if anything, was done in the way of prosecuting your voyage while in the bay and harbor of St. Anne's at the time you were in the harbor spoken of?—A. Nothing.

Q. Referring to the other places that you were at, Louisburg, Sidney, Bear's Head and Bird Island, what was done at any of these places?—A. Nothing.

The COURT. There is no allegation in the libel that there was anything done except in the harbor of St. Anne's.

Mr. MEAGHER. I don't know my lord, there is an allegation that they dried fish, and dry and cure fish within three marine miles of the coast or shores of Nova Scotia.

Q. What did you do towards curing or preserving the halibut that you caught?—A. We threw them down amongst the ice.

Q. You cleaned them and put them on the ice?—A. Yes.

Q. When was that done?—A. The same day they were caught.

Q. Where were you then?—A. On the Western Banks.

Q. From that time to the seizure of the vessel had anything been done to them?—A. No sir.

Q. How long will halibut that have been cleaned and put on ice keep fresh?—A. About three weeks.

Q. Putting fresh fish on ice, will that cure them?—A. It will not, it will only preserve them for a short time.

Q. Describe how you preserve the halibut, how you put them on the ice?—A. We break up the ice after we catch the fish and put them on it and put the ice around them.

Q. When do you break up the ice and put it on the fish?—A. After the fish are caught and ready to go in the ice pen.

Q. Is it customary to break the ice up before the fish are caught?—A. No sir, the ice would all melt.

(Mr. Meagher passes the witness a paper.)

Q. Look at that paper; where did you get that?—A. At North Sidney.

Q. When?—A. On Saturday at the time I was in there that I have spoken of.

Q. You say that you got this paper at North Sidney at the time you were in there; how did you happen to get it?

The COURT. I understand Mr. Graham to admit that the paper was signed by the collector of customs at Sidney.

Mr. MEAGHER. I tender the paper now.

Mr. GRAHAM. It has no pertinency to any of the issues here.

The COURT. I will receive it as evidence of legal entry at the custom house under the customs act at Sidney.

Q. What is this paper now shown you?—A. A permit to touch and trade.

Q. By whom is it signed; did you see it signed?—A. Yes.

Q. Who signed it?—A. Samuel Dow, collector.

Q. Whose signature is that?—A. Samuel J. Anderson.

Q. Who is he?—A. Collector of customs, Portland, Maine.

Q. Did you see him sign it?—A. Yes sir.

Q. Have you frequently entered at that port and cleared?—A. I never entered there on a fishing voyage.

Q. Have you had any business with him as collector in connection with your vessels in his capacity of collector of customs?—A. Yes.

Q. Whom did you receive that paper from?—A. The man at the custom house.

Q. What was his name?—A. I don't know his name.

Q. Where did you get it?—A. In the custom house of Portland.

Q. Had you that paper with you on that voyage?—A. Yes.

Cross-examination by Mr. GRAHAM:

Q. I believe you are one of the owners of the *Ella M. Doughty*?—A. Yes.

Q. How long were you sailing as master of the *Ella M. Doughty*?—A. Three years.

Q. That is her age, I suppose?—A. Yes.

Q. She is constructed for fishing?—A. Yes.

Q. And fitted out for fishing; her build, hold are all for fishing?—A. Yes.

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Q. How many years previously had you been master of a fishing ves-

el ?—A. About thirteen years.

Q. During that time you never entered or cleared at the custom

house ?—A. Never but once.

Q. Then you never had a paper like this paper before ? [License to

touch and trade.]—A. No.

Q. I suppose you had been into port before this ; I am not asking in

relation to the fishing regulations ; you had been into port before, buy-

ing bait ? I suppose ?—A. Yes.

Q. On fishing voyages ?—A. Yes.

Q. And without any permit ?—A. Yes.

Q. You never had been required to have that before ?—A. No sir.

Q. You never were in the frozen herring trade on the coast of New-

foundland ?—A. No sir.

Q. Do you know what that trade is ?—A. No sir.

Q. Previous to your being master you sailed, I suppose, as fisher-

man ?—A. Yes.

Q. How long altogether ?—A. About twenty four years.

Q. You never saw any of these permits before ?—A. No sir, that is

the first one I ever saw.

Q. Will you give the names of your crew on this voyage ?—A. I don't

think I can think of them all.

Q. How many were there ?—A. Fourteen all told.

Q. I suppose they are sailing out of Portland ? A. A part of them.

Q. And all out of the New England States ?—A. Yes.

Q. All out of Maine ?—A. I can't say.

Q. Making short voyages ?—A. Yes, to the Banks.

Q. They are in there every four or five weeks, in Portland or the New

England States ?—A. Some may be and some are probably South and

gone longer.

Q. They would be backwards and forwards ?—A. Yes.

Q. You don't keep any log aboard the vessel ?—A. No sir.

Q. I suppose you are fishing on shares ?—A. Yes.

Q. The men wouldn't be paid wages at all ?—A. No sir.

Q. Did you have officers ?—A. No sir.

Q. Every man is quite as good as an officer ?—A. Yes.

Q. Will you tell me how the fishing vessels are fitted up in the

hold ?—A. They are fitted up in different ways for different kinds of

fishing.

Q. Have they bins for ice ?—A. Yes.

Q. You carry ballast ?—A. Ballast underneath.

Q. That is decked down ?—A. Yes.

Q. The *Ella M. Doughty* has been employed in fishing all her life ?—

A. Yes.

Q. Where was she built ?—A. Kennebunkport, Maine.

Q. Are the Georges included in the Western banks ?—A. No sir,

there are the Western banks, Brown bank and Le Hague bank.

Q. What other banks off Nova Scotia ?—A. Quero bank, St. Peters

bank and Grand bank.

Q. You have fished on all the banks you have mentioned ?—A. No

sir, I have fished on Le Hague, Quero, Western, on Green bank and

the Grand bank.

Q. On Georges ?—A. No sir.

Q. Were you in a fleet ?—A. No sir.

Q. You had never been at St. Paul's before ?—A. No sir.

Q. And none of your crew so far as you know, except one man, and he told you he had been there?—A. No, so far as I know.

Q. What fish, what quantity of the different fish you mentioned had you on board at the time of the seizure?—A. Five or six hundred weight of halibut, ten or twelve hundred of cod, cusk and hake.

Q. You were cod fishing as well as halibut fishing?—A. No sir.

Q. You didn't throw the cod fish away; were you not cod fishing as well as halibut fishing?—A. No sir.

Q. You salted or iced the cod fish?—A. Iced them.

Q. You renewed the ice on this voyage?—A. No sir, only when it melts off the top we throw on some more.

Q. What quantity of ice had you on the vessel when she was seized?—A. About twenty-five tons we took in when we left home.

Q. About how much had you in when you were seized?—A. I don't know.

Q. Who attends to the icing of the fish?—A. One of the men.

Q. You iced the herring too?—A. Yes.

Q. You broke up the ice and put on a layer of ice and then a layer of herring?—A. Yes.

Q. No cleaning the herring?—A. No sir.

Q. In reference to halibut, does each man have what he catches or is it equally divided?—A. Equally divided.

Q. Same with the cod?—A. Not in all cases.

Q. How is cod divided?—A. According to the amount a man catches of the cod.

Q. How far is the nearest bank to the one you were fishing on, the Western banks?—A. As far I think is the nearest one.

Q. What is the distance?—A. From where we were is about forty-five miles.

Q. How far is it to the Georges?—A. Three or four hundred miles.

Q. That was not a good spring for fishing, you had not good luck at the Western banks?—A. Not that trip.

Q. Where had you been the previous trip?—A. The same place.

Q. Did you tell any one that you decided to make for Cape North when you didn't get a good return on the Western bank?—A. I don't know but that I did.

Q. Did you not say that "not succeeding in getting anything on setting the trawls a second time I decided to make for Cape North." Did you say anything like that?—A. I am not positive.

Q. But you may have said it?—A. Yes.

Q. You conversed with some of the newspaper men down there didn't you?—A. Yes.

Q. With more than one?—A. Not that I know of.

Q. Did you know who it was that you conversed with?—A. No sir.

Q. You don't know his name?—A. No sir.

Q. Can you tell me your course after you got under way at the Western banks, what course you sailed?—A. No sir.

Q. Or anything near it?—A. No sir, we sailed different courses.

Q. On what day did you see the ice and in what direction was it?—A. Inshore of us.

Q. When you first saw the ice it was inshore of you?—A. Yes, we were standing on towards the land.

Q. That would be to the northward?—A. Yes.

Q. A field of drift ice to the northward?—A. Yes.

Q. Can you give the bearing of the ice from you?—A. No sir.

Q. It would not have prevented you from going to any of the other banks?—A. No, sir.

Q. I suppose you remember the conversation that took place between you and the captain of the *Lady Franklin*?—A. No sir.

Q. You didn't go to visit the grave of the great Angus McCastle?—A. No sir, I was not on shore.

Q. When you examined your bait, when the first man came on board, you knew you wanted bait then?—A. Yes.

Q. And you wanted a complete supply?—A. Yes.

Q. When you first examined it you knew you would want a complete supply of bait?—A. Yes.

Q. Did you know any means of getting it?—A. He was along side with it.

Q. Did you know any means of getting it from any other person?—A. No sir.

Q. About how much did you require?—A. Anywhere from eight to twelve or fifteen barrels.

Q. You bought a little over that?—A. No sir I don't think there was any over twelve barrels of it.

Q. There might be a barrel over that?—A. I can't say.

Q. About what time was this man on board on Tuesday, about what hour of the day, the first person that came on board?—A. Some time in the afternoon of Tuesday.

Q. I am speaking of the first man that brought bait?—A. In the morning.

Q. The captain of the *Lady Franklin* you had seen on Monday afternoon?—A. No sir Tuesday afternoon.

Q. Do you recollect the name of the *Lady Franklin*?—A. Yes I recollect the name of the *Lady Franklin*.

Q. And he was aboard on Tuesday?—A. Yes.

Q. When you speak of having frozen herring you mean they were on ice?—A. No sir, they were frozen in the winter and when we left home they were frozen and we put them in the ice house frozen without any ice on them.

Q. I suppose if you had not got any at St. Paul's bank you would have gone home?—A. No sir, I don't know whether I should or not.

Q. You would have been likely to have tried some other place?—A. Probably we should.

Q. So that when you state that the bait was to be used on St. Paul's bank, you mean St. Paul's bank or any other place where you could catch fish?—A. Yes outside of the three mile limit.

Q. Oh! It was only to be used on St. Paul's bank; then you knew the law about the three mile limit?—A. Yes.

Q. You had heard about it that spring?—A. Yes.

Q. You didn't feel safe down in that neighborhood did you?—A. Yes I felt safe enough.

Q. You would not have had any objection to using this bait on the Western bank or Quero bank?—A. I don't understand the question.

Q. You could use this bait on the Western bank as well as on St. Paul's bank?—A. Yes I could use it on any bank.

HENRY R. LAWRENCE, called by the defendants,

Examined by Mr. MEAGHER.

Q. What is your age?—A. Forty one years.

Q. What business have you been engaged in?—A. Fishing, mostly.

- Q. Have you ever been master of any vessels?—A. Yes.
- Q. Fishing vessels?—A. No sir, constwise.
- Q. You were in the *Ella M. Doughty* on the trip she made when she left Portland last year in April?—A. Yes.
- Q. What position, if any, did you hold on board?—A. Nothing more than any of the crew except navigator.
- Q. Do you remember what time she left Portland?—A. The twenty-sixth of April.
- Q. What voyage was she on?—A. On a halibut trip bound to the Western banks.
- Q. Was she fitted out to catch any other kind of fish?—A. No sir, only trawling for halibut.
- Q. Do you ever catch any other kind of fish?—A. Yes we catch most any kind of fish; they get on the trawls.
- Q. What do you principally do with that kind of fish?—A. We use them for bait; I never brought any home for market.
- Q. How long have you been in the halibut trawling business?—A. About five years.
- Q. Making how many trips a year?—A. Six or seven.
- Q. In your experience you never brought any other fish home but halibut?—A. No sir.
- Q. The other fish that get on the trawls are used principally for bait; you say she was fitted out for halibut fishing with trawls, had you any other gear on board?—A. No sir, nothing but trawls.
- Q. No hand lines?—A. No sir.
- Q. You left Portland at the end of April, what banks did you proceed to?—A. Western banks.
- Q. You arrived there when?—A. The following Saturday.
- Q. What was done?—A. We set our trawls twice that day.
- Q. Get any fish?—A. A few.
- Q. When did you leave there?—A. The same night.
- Q. For where?—A. To a position north.
- Q. What banks?—A. We intended to go to St. Paul's.
- Q. Had you ever been on those banks?—A. I had the summer before.
- Q. How often had you been there?—A. Only one trip.
- Q. State where St. Paul's banks are in relation to the island in what direction.—A. We fished to the north northeast of the island about six or seven miles the time I was there the year before.
- Q. About how many miles from the island?—A. Six or seven miles north of the island.
- Q. When you left the Western banks tell me where you intended to go, to what place did you proceed for?—A. We intended to go to St. Paul's banks.
- (Objected to.)
- The COURT. You allege that he bought bait intending to fish and I don't see how you can prevent asking him if he did intend to fish. The allegation of the Crown is based on the intent. I think he may continue.
- Q. When you left the Western banks where were you proceeding to?—A. To St. Paul's banks.
- Q. You say that you had been there the summer previous?—A. Yes.
- Q. How did you find the halibut fishing the summer previous?—A. Fair fishing.
- Q. Who had charge of the navigation of the vessel?—A. The captain himself.
- Q. Anybody assist him?—A. I did.

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Q. How was the weather and wind going up?—A. The wind was to the eastward.

Q. Always the same way?—A. The wind was to the east that night and the next day and we stood on a north course as well as we could and got into Louisburg the next morning.

Q. How did you happen to go in there?—A. That Saturday night we fell in with the ice and all the next day the ice kept increasing and as we stood in shore we found more ice outside of us; it looked stormy and we stood in towards Louisburg, but in trying to get in, the ice crowded us on shore and we nearly lost the vessel.

Q. How long did you lay in Louisburg?—A. Until Thursday.

Q. How was the weather in the mean time?—A. Mostly stormy.

Q. On Thursday you left and where did you start for?—A. St. Paul's bank.

Q. How far did you go in the direction of St. Paul's bank?—A. We got to Sidney when the wind changed to the eastward and the ice crowded us in shore and we were obliged to go into Sidney.

Q. And you remained there until when?—A. Until Monday morning.

Q. How was the weather during that time that you were at Sidney?—A. Sunday it was storming and Monday morning it cleared off and we started for St. Paul's bank.

Q. When you left Sidney on Monday morning where did you go to that day?—A. Up to the north of Ingonish to a place called "Bear Head" and we anchored under "Bear Head" that night; the ice came within two miles of the shore and the wind blowing very heavily.

Q. How long did you remain there?—A. Over night.

Q. And in the morning you got under way to go where?—A. To St. Paul's bank but the wind changed and the ice crowded us on shore and we were obliged to go into St. Anne's harbor.

Q. About what time did you get into St. Anne's?—A. About noon Tuesday.

Q. How many times did you attempt to go out of St. Anne's in that interval before you were seized?—A. Twice.

Q. What brought you back?—A. Ice and head winds.

Q. The last attempt you made was on what day?—A. Thursday.

Q. From Thursday until the day the vessel was seized Tuesday how was the weather and ice?—A. It was very stormy.

Q. Could you go out?—A. No sir, it was impossible for a steamboat to go out; the ice was very heavy.

Q. Were you on shore?—A. I did not go on shore until the vessel was seized.

Q. Was the captain ashore?—A. He went ashore Sunday.

Q. Did you while there do anything in the way of inquiring for or purchasing bait?—A. No sir, I did not.

Q. At the time the vessel was seized you had some fresh halibut and other fresh fish on board—I am not speaking of the herring—where were they caught?—A. On the Western bank.

Q. Were any of them caught anywhere else?—A. No sir.

Q. You have spoken of setting your trawls on the Western banks, did you set them anywhere else on that voyage?—A. No sir.

Q. Did you make ready to set them anywhere else?—A. No sir, never touched them.

Q. Except on the occasion you have spoken of on the Western bank?—A. That is all.

Q. Do you remember of the captain of the vessel coming on Tuesday afternoon when you were there in St. Anne's?—A. I remember of a man coming aboard from a vessel that came in the same way as we did.

Q. Did you see him in the fore-castle?—A. Yes.

Q. Who came with him?—A. The captain.

Q. What were they doing?—A. Only looking at the vessel to see what she was constructed.

Q. Did you hear any conversation between them while they were there?—A. Only remarks about the vessel.

Q. Were you in the fore-castle all the time while they were there?—A. Yes.

Q. When you were on the Western banks fishing how far was it from Sable Island?—A. About twenty four or twenty-five miles.

Q. The fish you caught on the Western banks, describe what you did in the way of preserving and curing them, and when you did it?—A. We cleaned them and put them in the hold, on top of the ice.

Q. Where was that done?—A. On the Western banks, the same place where we caught them.

Q. Between that time and the time the vessel was seized, anything, was done to the fish you caught?—A. Nothing, only what was necessary to keep them away a few of them.

Q. To the men in St. Anne's?—A. Yes.

Cross-examination by Mr. GRAHAM:

Q. You were employed as navigator?—A. Not employed, I was only helping the captain.

Q. Were you navigator on board the vessel when you left Port Louis?—A. No sir.

Q. There is no difference between you and any of the rest of the crew?—A. No sir.

Q. Had you been in any of these places off Cape Breton before?—A. No sir, I had been in Louisburg.

Q. Frequently?—A. No sir, only once.

Q. Had any of the men been in Louisburg before?—A. I think some of them had.

Q. The fishermen aboard the vessel were all American fishermen?—A. American citizens.

Q. American citizens that formerly belonged down at Cape Breton?—A. I don't know where they belonged.

Q. You don't know whether there were any that belonged down at Cape Breton?—A. I don't recollect of but one man and he belonged in Louisburg.

Q. He was a Frenchman?—A. Yes.

Q. Were there any others formerly Nova Scotians?—A. I think some of them were.

Q. Either of the crew formerly Nova Scotians before they came to St. Anne's?—A. Yes.

Q. Had you been master of any fishing vessel before?—A. No.

Q. You had only sailed in trading vessels before this voyage?—A. No sir; I have been fishing before, and sometimes in coasting vessels.

Q. You had only commanded trading vessels?—A. Yes, but not fishing vessels.

Q. You had sailed in fishing vessels before?—A. Yes.

Q. I suppose in fishing voyages you had replenished your supply of salt while on the voyage?—A. Yes.

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Q. Put in for bait?—A. Yes.

Q. Had you good luck at the time you were fishing at St. Paul's bank
previous summer?—A. Yes, fair luck.

Q. What banks have you fished on?—A. The Western banks is the
rtheast I have been.

Q. Had you good luck on the Western bank?—A. Not this trip.

Q. Codfish are caught with trawls?—A. Yes.

Q. More frequently now than with hand lines?—A. Those that are
ted out so.

Q. They fit out more vessels with trawls now than with hand lines?—

A. No, I don't think there are any more.

Q. As many?—A. Yes.

The COURT. What is the difference between cod-fishing trawls and
halibut trawls?

A. Halibut have heavier gear, heavier hook and line.

Mr. GRAHAM. There is no difference between halibut and codfish
trawls except the size of the hook?

A. Yes, and the line.

Q. Codfish are as liable to be caught on the halibut trawls as on
codfish trawls?—A. Yes.

Q. Don't they always fit out with halibut trawls; don't they fit out
with the larger gear so that they can take both codfish and halibut?—

A. No sir; it requires different gear.

Q. I thought the difference was in the size of the hook?—A. No sir;
is in the lines too.

Q. Codfish won't be caught on the halibut trawls?—A. Yes, we catch
number of fish on the halibut gear, but it would not pay to rig out for
halibut when you only intended to catch codfish.

Q. Don't vessels coming into these ports, frequently have as many
codfish as halibut?—A. Yes, but they are fitted out for both codfish
and halibut, two sets of gear.

Q. When you first saw ice after leaving the Western banks what was
the distance and course?—A. It was to the eastward of us.

Q. To the northeast?—A. From northeast to southeast.

Q. About what distance?—A. We fell in with it that night, never saw
until in the night and in the morning we were surrounded.

Q. At what distance when you first saw it?—A. There was scatter-
ing ice close to us when we noticed it; the heft of it might be three or
four miles to the eastward of us.

HORACE M. SARGEANT, one of the owners, sworn and testified:

Examined by Mr. MEAGHER:

Q. Where do you reside?—A. I reside at Falmouth, just out of Port-
land.

Q. You are one of the owners of the *Ella M. Doughty*?—A. Yes.

Q. Do you know the collector of customs at Portland?—A. Yes.

Q. Have you transacted business with him in his capacity as such?—
A. Yes.

Q. Who is he?—A. Samuel J. Anderson.

Q. How long has he filled that position?—A. About two years.

Q. Have you seen him write?—A. Yes, I have seen his signature sev-
eral times.

Q. Is that his signature to paper marked "J. McD. 2"?—A. Yes.

Q. Have you received papers signed by him and sealed with the seal
of the custom house?—A. Yes.

Q. Look at the seal on that paper?—A. That is the regular custom-house seal.

Q. You have received papers sealed with the custom-house seal?—A. Yes.

Q. And seen it applied?—A. Yes.

Mr. MEAGHER. I offer the paper. [License to touch and trade.]
(Admitted subject to objection.)

Cross-examination by Mr. GRAHAM:

Q. Do you own a lot of fishing vessels?—A. Yes sir.

Q. Any of them engaged in the frozen herring trade?—A. Yes.

Q. That frozen herring trade consists of buying cargoes of frozen herring at Newfoundland?—A. I never was in the Newfoundland trade, I have been in Eastport and Grand Menan.

Q. That consists of buying cargoes of fish?—A. Buying and catching, both.

Q. For an ordinary fishing voyage, not embracing the purchase of cargoes, do you take out a permit to touch and trade?—A. I took out a permit to touch and trade since the trouble, when coming this way; we used to take them out before the Washington treaty.

Q. For trade?—A. Yes.

Q. But you don't take them out except when there is trouble on the shores of British North America?—A. Our Government issued orders for all vessels to take them.

Q. I am not talking about that; you took them out before the Washington treaty.—A. Yes.

Q. But not during the Washington treaty?—A. No sir.

Q. But subsequently to the cessation of the Washington treaty you began to take them again?—A. Yes.

Q. Your vessels were fishing during the Washington treaty?—A. Yes.

[This closed the evidence in the case of the *Ellis M. Doughty*.]

IN THE VICE-ADMIRALTY COURT AT HALIFAX

BEFORE CHIEF JUSTICE McDONALD.

HER MAJESTY THE QUEEN, PLAINTIFF, }
vs. }
THE SHIP OR VESSEL "DAVID J. ADAMS" }
and her cargo, Defendants, }

Wallace Graham, Q. C., for the Crown. N. H. Meagher, Q. C., for the defense.

HENRY R. LAWRENCE, called by the defendants, testified:

Examined by Mr. MEAGHER.

Q. How long have you been engaged in the fishing business?—A. About twenty years.

Q. Are you familiar with the use of ice in connection with fish?—A. Yes.

Q. How long have you been in the business?—A. Off and on for ten years.

Q. Will putting fresh fish on ice cure them?—A. No sir it only preserves them for a short while.

Q. About how long will it preserve codfish?—A. Three weeks at the longest fit for consumption.

Q. How long will it preserve fresh herring that is usually used for bait?—A. Ice will not preserve them longer than three weeks at the most.

Cross examination by Mr. GRAHAM.

Q. How long does the ice last?—A. A good deal depends on the ice house; a good ice house will keep ice longer but the fish will not keep in the ice no matter how much you put in longer than about three weeks.

Q. With halibut how often do you have to apply the ice?—A. Only once except on top; we never disturb them until they are taken out. If the ice melts off the top we replenish it.

Q. You have to replenish during the three weeks?—A. On top, yes.

Q. Not very often?—A. No sir.

Q. How often?—A. In the summer time when the weather is real hot, we may have to once or twice on going home.

Q. How many days are you going home?—A. From eight to ten days.

Q. You may have to replenish it once or twice during that period?—A. Yes.

Q. The ice is continually melting?—A. Yes, on top.

Adjourned until Friday morning.

FRIDAY MORNING, June 3.

Counsel for the Crown puts in the treaty of 1818, on page 1592, of the annals of Congress. Revised Statutes, sections 4220; 4371 4334; 4131; 4337; 4320; 4321; 4365; 4377; 4319. Also the case of the *Nymph*, 1 Sumner, 516.

Notice to produce the fishermen's license of the *David J. Adams* is admitted.

It is also admitted that Captain Peter A. Scott is a fishery officer under the statute and was at the time of the seizure.

Mr. MEAGHER. I am not going to raise any question about the formality of the seizure but I shall contend that that act was not in force at that time.

PETER A. SCOTT, called by the Crown, testified:

Examined by Mr. GRAHAM.

Q. Were you commander of the *Lansdowne* at the time of the seizure of the *David J. Adams*?—A. I was.

Q. You held a commission at the time of the seizure?—A. I did.

Q. You made the seizure in May one year ago?—A. In May one year ago.

Q. Aldon Kinney was master of that vessel.—A. Yes.

Q. Did you ask him for the papers of the ship?—A. I did a few days afterwards; between the tenth and thirteenth of May.

Q. Whereabouts?—A. In Annapolis basin.

Q. What did he say or do?—A. He told me he would not give them to me.

Q. The *David J. Adams* was a fishing vessel?—A. A fishing vessel.

Cross examination by Mr. MEAGHER.

Q. Were you on board of her?—A. I was.

Q. Were you in the hold?—A. I put my head down. I didn't go into the hold.

Q. Had she any cargo on board other than fishing supplies and fish?—A. Not any.

Q. When were you on board of her?—A. On the sixth of May.

Q. I mean at the time you looked into the hold?—A. The sixth of May, the same day I seized her.

Mr. GRAHAM. Having given notice to produce a fisherman's license to engage in fishery and having called upon them to produce it as far back as September 1886, and having called for it this morning and it not having been produced, I propose to read in evidence the form of a license to fish. It is in evidence that she was a fishing vessel, and it is therefore presumed that she had a license as required by law.

Mr. MEAGHER. It is alleged and not denied that she was a fishing vessel.

EVIDENCE FOR DEFENDANTS.

Counsel for defendant puts in a proclamation by the President of the fifth of October 1830, volume 4, U. S. Statutes at Large, page 817; also an order in council of the fifth of November 1830.

Mr. GRAHAM. I object to them. I admit the execution of the documents but I do not admit their relevancy.

Counsel for the defendant also puts in sections 4364; 2497; 2498; of the Revised Statutes of the United States. Also the evidence taken at Boston under the commission and the testimony or deposition taken yesterday of Henry R. Lawrence.

The COURT. How do you propose to address the court; in what order?

Mr. GRAHAM. In the usual order of an argument.

Mr. WALLACE GRAHAM for the Crown:

My LORD: This action is brought for the condemnation of the *David J. Adams* and her cargo for violation of the statute of 59 George the III, chapter 38 and the statutes of Canada 31 Victoria, chapter 61 and 33 Victoria, chapter 23. It was commenced on the tenth of May 1886. The claimant filed his claim on the tenth day of June 1886. Jessie Lewis of Gloucester, of the United States, is the owner of that vessel. I have prepared an abstract of the pleadings in that case and if my learned friend has no objection I will hand it to your lordship. I will state it briefly, my lord, because the pleadings are long.

The charge against this vessel is preparing to fish within prohibited waters and fishing within prohibited waters. The defense is that the *David J. Adams* was not preparing to fish; that while they admit the purchase of bait within the prohibited waters, they deny that to be "a preparation to fish." They also contend that the statute is aimed at fishing and not at preparations to fish within our bays and harbors and within the three mile belt. They also say that the statutes of Canada are beyond the powers of the Dominion parliament; that the vessel, although she may have violated the statute, yet, inasmuch as the owner was innocent or ignorant of the violation, the vessel could not be condemned. And they have further answered in respect to the preparation to fish that under an order in council they had a right to procure

this bait; that it was an exporting of goods from the colonies to a foreign country.

The statutes, my lord, to which I have referred are briefly as follows: (Mr. Graham here read the 59 George III, chap. 38, sect. 2 and 4.)

Also 31 of Victoria, chap. 61; 33 Victoria, chap. 15 and chap. 15 of the acts of Parliament of 1870.

Now I propose to deal briefly with the facts in the case and refer to some extracts from the evidence. The *David J. Adams* in April a year ago, a vessel belonging in Gloucester, fitted out at Eastport for the Georges bank. She didn't fish on the Georges, but did fish on the Western banks in two different places and on the first occasion was unsuccessful. On the second occasion she caught eight or nine thousand pounds of halibut and cod fish. She fished afterwards unsuccessfully on Brown's bank and then three weeks having elapsed—the usual period for these voyages being from three to four weeks—she returned to Eastport. At Eastport she procured some bait. There is a difference in the testimony as to the quantity of bait she procured there; the evidence is given by four or five members of the crew. They say they procured several barrels of bait there and after procuring it the vessel sailed across to the coast of the Bay of Fundy and entered Digby gut. She hailed a vessel there that was fishing for cod fish. She arrived there on Wednesday the fifth of May. She got herring from three different boats in the evening; three boats that came off from the shore. The names of these persons are not given; I suppose they were not known to the American witnesses and it was from them that we procured this evidence. One of them, no doubt, was the witness Taylor, that we afterwards called, because he refers to the fact that he sold bait to the master of the *David J. Adams* on this Wednesday. She came to anchor in Digby gut within the light and on that afternoon and evening she purchased of one Samuel B. Ellis, a number of barrels of herring and the master paid Samuel B. Ellis for the bait. On that evening the master of the *David J. Adams* went ashore to the fishing house of one Taylor, who has given his evidence in this case. That man's nets were ashore. The master told Taylor to set his nets and whatever herring he would catch he would take from him and pay him a certain rate for the fish. The man Taylor set his nets and the next morning took this bait on board and received his pay for it, he and one Keene. Keene had also caught fish, having heard the captain say he required herring for bait; they both took their bait on board together and sold it to the master of the vessel. The vessel at this time, as sworn to by these witnesses, had her name concealed by an old sail which hung down over her stern. The next morning she sailed past the wharf at Digby and two witnesses on the wharf, one Riley and one Dodge, saw the vessel and they testify that at this time the vessel's name was concealed in the manner I have described. She proceeded over to the other shore and there came to anchor. While she was there the master of the *Adams* purchased from one Broom, four barrels of bait and about two tons of ice. This ice and bait were taken on board of the *David J. Adams* by a young man by the name of Spurr. The vessel remained there during the night and on the next morning contemporaneous with the appearance, to them, of the *Lansdowne*, she got under way and set sail.

The *Lansdowne* was at anchor in Digby and Annapolis basin, having arrived from a cruise the day before, and in the morning, the mate having received certain information, proceeded in a boat to board the vessel. He asked certain questions and the master of the *Adams* denied that he had any bait on board. The boat returned to the *Lansdowne*

and the *Adams* proceeded to go out of the basin through St. George's channel. It seems that more information reached the ears of those on board the *Lansdowne*, and again the first officer of the *Lansdowne* went on board of the *D. and J. Adams* and examined the bait. The master was asked in reference to that bait and he said that it was ten days old. They couldn't elicit the fact of his having procured it, as he did, the day before. Conversation took place which shows that the master of the *Adams* intended to mislead the officer of the *Lansdowne* in respect to the purchase of that bait. The bait was examined and found in the opinion of those on board to be quite fresh. After an investigation the vessel was seized by the *Lansdowne* and Captain Scott, as stated in your lordship's hearing to-day, he being an officer duly authorized under the statute, seized the vessel. Three days afterwards he demanded from the master of the *Adams* the ship's papers. The master of the *Adams* declined and refused to produce the papers and they have not yet been produced.

Now if your lordship pleases, without wearying your lordship with these extracts from the evidence, I propose to deal with the legal aspects in this case. But I contend in the first place that the *David J. Adams* was found preparing to fish within three marine miles of the coasts, bays, creeks and harbors prohibited in 59 George III, chap. 38. Now, in the first place taking the term "preparing to fish" by itself both in the English statute and the Canadian statutes to which I have referred, without the context, it is quite broad enough to cover the acts of the master and crew of the *David J. Adams*. There is the purchase of bait and ice; the breaking up of the ice; and the preparation of the bait for fishing.

The COURT. I suppose Mr Meagher will not deny this is preparation for fishing.

Mr GRAHAM. The storing of the bait with the ice was, as I contend, "preparing to fish" and I think that would be the way in which an ordinary person, even if not familiar with fishing, would understand it.

The COURT. I don't understand the pleadings to deny that. The pleadings deny that there was any preparation to fish within the prohibited waters.

Mr MEAGHER. I admit at once that the acts proved is a preparation to fish but it is not the preparation to fish prohibited by the treaty or the act.

Mr GRAHAM. I say these acts would be construed to be a preparation to fish. Isaiah Roberts was asked this question "What was done while the vessel was in the basin in the way of fishing or getting ready to fish?" and he answered "nothing but cutting up the ice and icing the bait." He considered that as getting ready to fish.

In Winfield on Words and Phrases, page 479, it says "Preparation consists in devising or arranging the means or measures necessary for the commission of the offense. The attempt is the direct movement toward the commission after the preparations are made."

In the case of *The People vs Murray* 14 Cal. 140, the judgment of the supreme court was delivered by Field, C. J. now one of the most distinguished judges of the Supreme Court of the United States, and this same distinction is made. In that decision he says that between the preparation of the attempt and the attempt itself there is a wide difference. [Reads from the opinion.] So that the purchase of a gun with the declared intention to shoot was there given as an illustration of preparation as distinguished from the attempt. Now if purchasing and loading a gun with the declared intention to shoot his neighbor is pre-

paring to shoot him, the purchasing or procuring of bait and ice and the preparation and storing of the same for fishing are comprized, it seems to me, in the term "preparing to fish."

Now Mr. Sabine in his report to the Secretary of the Treasury on the fisheries refers to this expression "preparing to fish" page 303. His contention was that the expression should not have been introduced into the provincial statute inasmuch as it was not in the treaty, but he admits that the term "preparing to fish" covers the repairing of damages to sails, rigging and boats, the arranging or reeling of lines, the preparation of bait etc. And he says "an American vessel when within three miles of the coast, or when in a harbor for shelter can not escape seizure if the colonial entters enforce the law, for it is obvious that everything done on board may be embraced in the comprehensive words 'preparing to fish.' What, then, is the common sense construction of these words? I reply that a fishing vessel at home secured at her owner's wharf is said to be preparing to fish, when among other things her crew are repairing her and taking in wood and water, and that a repetition of these acts when in a colonial harbor constitutes the same preparation."

Now I propose my lord, in order to arrive at the meaning of the act, to look, not merely at the words, the technical term "preparing to fish," but to look at the convention of 1818, which that act was passed to render operative and also to the object which the legislature had in view in passing the English act of 1819, and also to the context of the statute.

I think it is pretty well admitted that the convention itself absolutely prohibits any fishing vessels of the United States from entering within three miles of our coasts, bays, creeks or harbors except for one of the four specified purposes. I think it will be admitted that so far as the convention is concerned the *David J. Adams* was guilty of a violation of its terms. It has also been conceded that the convention prohibits the American fishermen from entering our territorial waters except for one of these purposes. As long ago as the time of the great Daniel Webster himself it would appear that an admission of that character was made. On page 264 of Sabines report, Mr. Webster, then Secretary of State, said, "It would appear that by a strict and rigid construction of this article fishing vessels of the United States are precluded from entering into the bays or harbors of the British provinces except for the purposes of shelter, repairing damages and obtaining wood and water."

At the last session of the Congress of the United States a report was made by the Committee on Foreign Relations and Senator Edmunds seems to have been the chairman of that committee; at any rate he submitted the report. The duties of that committee were to inquire into the matter of the rights and interests of the American fisheries and fishermen. They were charged with that duty at the previous session of Congress and having investigated the matter and taken evidence at the last session of Congress they presented a report in which we find the following language; "concluding then from what has been before stated, that there is no serious difficulty in respect to the question where American fishermen can carry on their operations, it would seem to be easy to know precisely what our fishermen may and may not do in the territorial waters adjacent to the British Dominions. What they may do may be stated as follows:

- (1) They have the liberty to take fish "on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands,"

(2) They have the right to take fish "on the western and northern coasts of Newfoundland from Cape Ray to the Quirpon Islands."

(3) Also "on the shores of the Magdalen Islands."

(4) Also "on the coasts, bays, harbors and creeks from Mount Joly on the southern coast of Labrador to and through the straits of Belle Isle, and thence northwardly indefinitely along the coast" subject to any exclusive rights of the Hudson Bay Company.

(5) The right "to dry and cure fish in any of the unsettled bays, harbors and creeks of the southern part of the coast of Newfoundland" before described and of the coast of Labrador, without interfering with the rights of settlers etc.

(6) The right of American fishermen in their character as such to enter the bays and harbors of Great Britain in America for the purposes of shelter, of repairing damages, of purchasing wood, of obtaining water and for no other purpose whatever.

But they are to be under such restrictions in respect of "their entry into bays and harbors where they are not entitled to fish, as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The things that by this article American fishermen must not do are:
(1) "Fish within three miles of any of the shores of the British Dominions, excepting those specially above named."

(2) "Enter within this three mile limit except for the purposes last stated."

That report may be found on page 56 of the correspondence respecting the North American fisheries presented to both Houses of Parliament by command of Her Majesty in 1887.

Now the English Parliament had this convention before them when they were called upon to pass an act to make it operative, and whatever else can be said in this case in respect to that act of Parliament, it is quite obvious that the fishing vessels of the United States are prohibited from entering into the territorial waters of the Dominion of Canada, except for one of the four specified purposes. The language in the proviso, the prohibitory language, is the same, both in the convention and in the English statute and the legislature having this treaty or convention before them and desiring to make it operative made the statute as broad as the convention itself.

The duty was cast upon the legislature to make the convention operative and to prevent any extension or abuse of the privilege of putting in for repairs, wood and water. And it is quite obvious that they had before their minds the purchase of wood and the obtaining of water. Those were not privileges they could claim by the law of nations, whatever may be said with respect to shelter.

Then in addition to the convention the attention of Parliament would be called to matters that had taken place previous to this convention. While we cannot recite what was said by the members of Parliament at the time any measure was debated we can examine the evils that Parliament was called upon to remedy and the matters which necessitated the legislation.

Now Maxwell on the construction of statutes, page 27, says, "To arrive at the real meaning it is always necessary to take a broad general view of the act, so as to get an exact conception of its aim, scope and object. It is necessary, according to Lord Coke, to consider (1) what was the law before the act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parlia-

ment has appointed; (4) the reason of the remedy. According to another authority the true meaning is to be found, not merely from the words of the act, but from the cause and necessity of its being made, from a comparison of its several parts and from external circumstances."

Now this report that was presented by Senator Edmunds to Congress says that the committee came to this conclusion.

"The committee is of the opinion in view of the history and of the plain language above quoted [the first article of the convention] that this article was intended to deal and did deal only with the subject of the admission of American fishermen within the territorial jurisdiction of His Britannic Majesty as defined by the law of nations."

I now wish to call your lordship's attention to what had taken place previous to this convention. There had been seizures on the coast of this very province for violation of the territorial rights of Great Britain. Lord Bathurst in a letter to the governor of Newfoundland, dated the 17 of June 1815, which I will hand to your lordship, says:

Mr. MEAGHER. He can refer to this as a part of his argument, but as to handing it to your lordship to be read as evidence, I cannot consent to that.

Mr. GRAHAM. His instructions were that United States fishing vessels were to be excluded from the bays, harbors, rivers, creeks and inlets of all of His Majesty's possessions; they were to be excluded from all the jurisdictional waters of Great Britain. And the instructions to Admiral Milne, dated the 12 of May 1817, were as follows:

"On your meeting with any foreign vessels fishing or at anchor in any of the harbors or creeks in His Majesty's North American provinces, or within our maritime jurisdiction, you will seize and send such vessel so trespassing to Halifax for adjudication, unless it should clearly appear that they had been obliged to put in there in consequence of distress."

Now under these instructions the commander of the *Dec* seized a number of vessels down off Cape Negro and in Ragged Island harbor. The grounds of the seizure are stated in Bathurst's letter to Mr. Rush, the American minister, dated August 8 1817. By these papers you will perceive that the vessels in question were in the habit of occupying and were at the time of the seizure actually occupying, for the purpose of fishing, certain harbors in His Majesty's dominion in violation of the orders made of foreign vessels making similar encroachments, to which it is not to be supposed the masters of the vessels could be ignorant. Then these vessels were seized and brought to Halifax. Proceedings were taken against them in the vice-admiralty court, and the judge decided that the previous treaty under which the American fishing vessels had the liberty of fishing in our territorial waters had been abrogated by the war and sustaining the right to exclude the vessels from our territorial waters; but inasmuch as there was no convention and no statute, he decreed that the vessels should be released. That was previous to the convention and previous to the statute. The decision is not reported and I was obliged to resort to American literature to find it.

Now all the correspondence that passed in reference to the treaty in respect to the negotiations that took place before the convention of 1818, show that England was contending for her territorial rights.

(At this point Mr. Graham read from the annals of Congress, extracts from a letter of Mr. Adams to the Secretary of State, dated February 8 1816, another letter dated October 20, 1818, to Messrs. Galatin and Rush and also from a letter from Lord Bathurst dated October 30 1815.)

Now it appears that there had been contention in respect to the limitations of the territorial jurisdiction of his Britannic Majesty and an order had been given in one case by the captain of a sloop of war, *Jaseur*, to an American fishing vessel that was sailing within four or five miles of Cape Sable to go outside and not approach within sixty miles of the coast. Admiral Griffith had issued an order that vessels were to be removed altogether from the coasts of the British colonies.

Now the point I have been endeavoring to make is that the legislature in passing this act had before them not merely the question of fish—and the mere taking of the fish from the waters was not considered a very valuable thing at that time—but they did have in mind the very important matter of the preoccupation of their bays and harbors by American fishermen. They had heard the complaints made by British subjects in respect to this preoccupation. That was a period of non-intercourse. American trading vessels were not allowed to bring any goods into Nova Scotia; if they did they were forfeited. British vessels were not allowed to enter the ports of the United States and every vessel leaving the United States was obliged to give bonds that they would not enter the ports of the British dominion. The legislature would have an object in restricting in every possible way the privileges of the American fishermen coming within our bays and harbors and to do all in their power to prevent any extension of the right that they had given them by this treaty to purchase wood and procure water.

Now the view which I am now pressing upon your lordship has been advanced before and you will find it useful to refer to the article which is contained in the fifth American Law Review page 410. It is an article said to have been written by Judge Pomeroy, I think the author of the work on constitutional law. He is dealing with the claims of the fishing vessels of the United States and he considers first, the claim of right to enter for shelter, for repairs and for wood and water and to anchor when not driven in by storm to escape imminent danger; then he comes to the second claim, or right to lay at anchor in bays and harbors and other territorial waters for other purposes and he says: [reads from an article in the fifth American Law Review page 410.]

Now if we look at the context of this act we find that the expression "preparing to fish" is used with the expression "fishing." I suppose it is necessary to arrive at the meaning of the word fishing, and my contention is that it is not restricted to the act of catching the fish. There is nothing about it that implies success. It includes the attempt to fish. The law officers of the Crown, in an opinion given in 1841 refer to this question. They were asked in reference to the right to pass through the Strait of Canso, which they could not do without coming within the prescribed limits, and whether casting bait to lure fish in the track of a vessel was fishing within the meaning of the convention and they said, "we are also of the opinion that casting bait to lure fish in the track of any American vessel navigating the passage would constitute a fishing within the negative terms of the convention." That also will be found in Sabine's report page 287.

I find that it is contended on the part of the United States that the liberty to take fish on the coast of Newfoundland and of the Magdalen islands embraces the right to purchase bait as well; and now they are putting forward the claim that the two vessels, *Thomas F. Bayard*, and the *Masoot*, were improperly prevented from purchasing bait on those coasts. In a letter from Mr. Phelps, the present minister in London, to Lord Iddesleigh he says: "These vessels were proposing to fish in waters in which the right to fish is expressly secured to Americans by

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the terms of the treaty of 1818; the former in Bonne bay, on the north-west coast of Newfoundland, and the latter near the shores of the Magdalen islands."

For this purpose the *Bayard* attempted to purchase bait in the port of Bonne bay, having reported at the custom house and announced its object. The *Mascot* made a similar attempt at Port Amherst in the Magdalen islands, and also desired to take on board a pilot. Both vessels were refused permission by the authorities to purchase bait, and the *Mascot* to take a pilot, and were notified to leave the ports within twenty four hours on penalty of seizure. They were therefore compelled to depart, to break up their voyages, and to return home, to their very great loss. I append copies of the affidavits of the masters of these vessels, stating the facts.

Your lordship will observe, upon reference to the treaty, not only that the right to fish in these waters is conferred by it, but that the clause prohibiting entry by American fishermen into Canadian ports, except for certain specified purposes, which is relied on by the Canadian Government in the cases of the *Adams* and of some other vessels, has no application whatever to the ports from which the *Bayard* and the *Mascot* were excluded. The only prohibition in the treaty having reference to those ports is against curing and drying fish there, without leave of the inhabitants, which the vessels excluded had no intention of doing.

I am considering the use of the term "to take fish" in the treaty. They contend that that is broad enough to cover the purchase of bait as well as the actual fishing. If it is broad enough for that purpose [which I don't admit for I think the contention is extreme] I think the term fishing as we find it here is sufficiently broad to cover any attempts at fishing, like the lowering of lines into the water or any arrangements that are made in respect to fishing without the actual catching of the fish.

Mr. MEAGHER. I should not dispute that putting lines into the water is fishing.

Mr. GRAHAM. Then if your lordship pleases "preparing to fish" is something very much broader than fishing. If fishing does not imply the catching of fish but covers the lowering of lines into the water, then "preparing to fish" must have a much broader signification.

If the words were to be used in the sense of arranging the lines for fishing the legislature could have used other words which would have expressed its meaning very much better. They could have used the words "attempt to fish" which they evidently intended to cover preparations, which would not be embraced in the expression "attempting to fish" and which is certainly broader than the expression "fishing."

And that, if your lordship pleases, is the fallacy, as I contend, in the case of the *White Fawn*, decided in the province of St. John by Judge Hazen of the vice-admiralty court. [Reads from the opinion in the case of the *White Fawn*.]

Now in this case my learned friend on the other side admits that the term "preparing to fish" does embrace the acts committed by the captain and the crew of the *David J. Adams*.

The COURT. The only point decided there, is, that before you can obtain a forfeiture under the statute you must prove on the part of the Crown that the preparation to fish was to fish within the three mile limit. I understand him to say that although a fishing vessel be within the limit—she is not caught fishing, she is not caught with any on board as having fished, but she is lying within the waters with her lines already

prepared to throw over and cast bait, and he says that is preparing to fish in British waters.

Mr. GRAHAM. My whole argument has been to show that the expression "preparing to fish" is much broader than the learned judge was bound to limit it to. My contention of course is that the act was aimed, not so much at fishing, as the preparation to fish.

The COURT. I understand your argument, I was only stating what I thought Judge Hazen decided. My idea is that he decided that the Crown to recover under the statute as it then stood, that although the purchase of bait was preparing to fish, if there was evidence that that preparation to fish was to be carried out in British waters within the three mile limit it would be a forfeiture; but that there could be no forfeiture, although the preparation to fish was manifest and proven, if that preparation was to be effected, if the fishing was to be carried out beyond the three mile limit. That was under the statute as it then stood. He was dealing with a different statute than the one now under consideration.

Mr. GRAHAM. The point I am dealing with now is that he limited the words "preparing to fish" to the setting of nets and lines.

The COURT. I thought in reading it that he used that rather as an illustration.

Mr. GRAHAM. No, my lord, he says the object the legislature had in view was to prevent the escape of the vessel, that if she was found setting nets and lines that was to be sufficient evidence of the fishing. And the setting of nets and lines, as we agree here to day, would be actual fishing. So that the term "preparing to fish," as I contend, is much more comprehensive.

My contention is not that the legislature was dealing with the difficulties of catching the American fishing vessels in the act of fishing, but was seeking means to prevent their making preparations on our coasts and in our bays and harbors for fishing; to prevent their fitting out their vessels and making our bays and harbors a base for obtaining their supplies to engage in the fisheries. They were seeking to prevent the American fishermen from coming in competition with our fishermen.

The COURT. I fancy that your view as stated now could not be successfully controverted if stated in the words you used—simply fishing or preparing to fish; but the statute goes further and says "fishing in British waters" and "preparing to fish in British waters."

Mr. GRAHAM. I will come to that in a few moments. There is another thing to which I wish to call your lordships attention and that is the proviso or exception contained in section 3. The prohibition is in section 2 and it prevents fishing or preparing to fish in the bays and harbors specified and my contention is that that must imply a prohibition against procuring and purchasing articles preparatory to fishing because section 3 contains an exception. The legislature must have contemplated when they prohibited American vessels from fishing or preparing to fish that there was a possibility of that being construed to exclude them from our ports, because the exception was made that they might enter the ports for procuring wood and water and for shelter and repairs. I am referring to the convention and the statute as well, but I am more particularly dealing with the statute. I contend that the prohibition is against procuring and purchasing supplies preparatory to fishing, because it is alleged by the way of proviso and exception that they shall have the right to purchase certain articles. They say you shall not prepare to fish but by way of exception you may

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purchase wood and procure water; so that the legislature in using the words "preparing to fish" must have taken it for granted that that would imply the exclusion of vessels from purchasing such articles as wood or they would not have enacted the third section by way of proviso or exception. It is obvious that the legislature had the purchase of but one article in its mind when the act was passed and that in using the words "preparing to fish" it intended to use a term broad enough to cover all acts which the master and crew of the vessel might perform relative to the voyage which he was about to undertake.

Now I shall deal next with the question which your lordship has indicated—whether or not it refers to preparing within prohibited waters to fish in the prohibited waters, or whether the expression "preparing to fish" is a compound word used to comprehend all such acts as the purchase of bait and fitting out the vessel which is my contention. There can be no doubt about the language of the treaty or the language of the statute; that it prohibits the vessels of the United States from entering the jurisdictional waters of Her Majesty except for the four specified purposes. But the point is whether there can be a forfeiture for preparing to fish. Now if your lordship looks at the language of this act you will find—of course I make nothing of punctuation, but so far as it goes I say that "preparing to fish" is used as a compound word. If they were dealing with the subjects I was calling your lordship's attention to they would have been obliged to use this awkward expression, "if she shall have been found preparing within such a distance of such coast to fish," thus separating the word "preparing" from the expression "to fish." My contention is that the emphasis is placed upon the preparation, and not upon the fishing but that if the preparation is within the three mile limit there is a forfeiture. The designation of the place qualifies the whole expression "preparing to fish."

The COURT. Your argument is that the policy of the treaty was to protect the British fishermen against intrusion and competition and that applied as far as their coast extends to a strip of territory three miles out; that they shall not fish within that and shall not prepare to fish within that; that they shall not prepare to fish at all because it is just as bad to buy bait and fish outside, as if they were allowed to fish on our own coast. That is your argument.

Mr. GRAHAM. That is my argument my lord. I contend that the construction must be that there is a forfeiture if there is a preparation within the three mile limit. Instead of the legislature saying, "if the vessel is found purchasing bait, if she is found refitting etc., within the three mile limit" they have grouped all these acts which a vessel might perform preparatory to going on a fishing voyage and have used this comprehensive term "preparing to fish;" so that the designation of the expression qualifies the whole term and does not qualify the mere expression "to fish." It is ambiguous but it must be construed in that way to prevent an evasion.

"Revenue laws are not penal laws in the sense that requires them to be construed with great strictness in favor of the defendant. They are rather to be regarded as remedial in their character intended to prevent fraud, suppress public wrong and promote public good. They should be so construed as to carry out the intention of the legislature in passing them and most effectually accomplish those objects." 3 Wallace 145.

Now, if your lordship please, if the construction I have contended for is not to be adopted an evasion must take place in almost every instance. A vessel is found preparing to fish, the parties can always



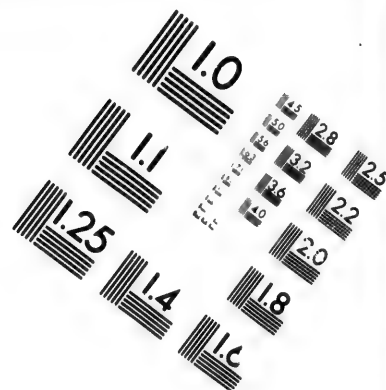
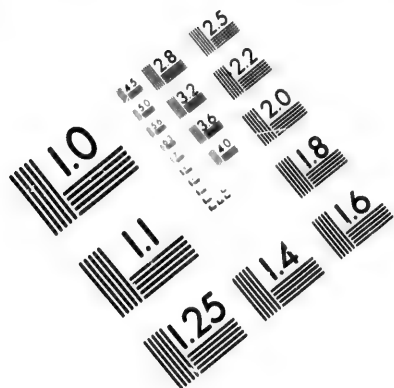
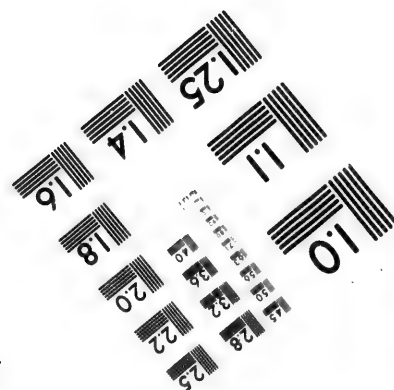
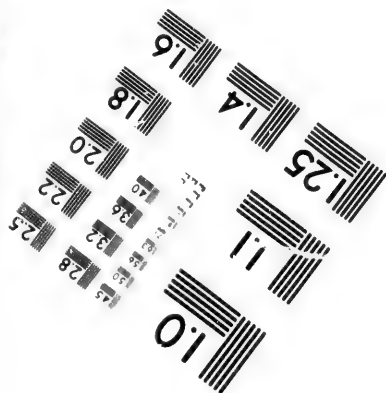
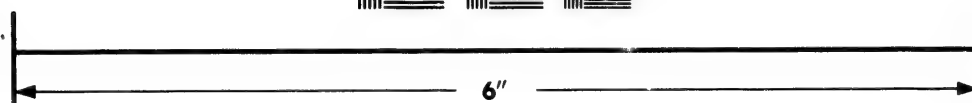
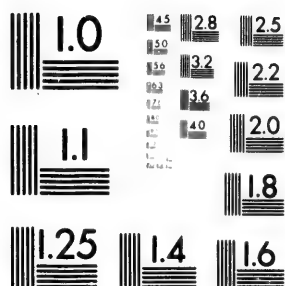


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come forward and say that this preparation is solely in reference to fishing outside of the three mile limit. We had an illustration of it yesterday. We had the evidence in this case, five witnesses called by the counsel for the claimant said in respect to this preparation "we didnt intend to fish within the three mile limit." It would be impossible to prevent the fishing vessels from making preparations because they could always come forward and say that they intended to fish outside of the three mile limit, and as I say the legislature could not have intended that such a construction should be placed on those words.

I now wish to refer your lordship to the decision of this court in the case of the *J. H. Nickerson* [reads from the opinion].

The COURT. The judge was dealing solely with preparations to fish; there was not a particle of evidence over and beyond the purchase of bait.

Mr. MEAGHER. I think there was evidence that the gills of the fish were fresh and that there was blood on the rail.

Mr. GRAHAM. No, I have read the evidence all through. There was some shadow of evidence about there being scales on the mainsail.

The COURT. But the judge rejected that and his decision is solely and entirely on the preparation to fish.

[Mr. Graham reads the last part of the opinion.]

The COURT. That is very general as to the acts of Parliament. It would look as if the learned judge thought that in his opinion the purchase of bait was a violation of the treaty and a forfeitable offense; that appears to me as begging the question.

Mr. GRAHAM. The learned judge could not have decided that it was forfeited for violation of the convention, he must have dealt squarely with the question of preparation to fish as contained in the statute. The *J. H. Nickerson* is exactly on all fours with this case. If the *J. H. Nickerson* was properly condemned the *David J. Adams* must also be condemned.

The COURT. I agree with you that if that judgment is binding on me this case is decided. If the judgment dealt squarely with the question that the buying of bait in prohibited waters is a forfeitable offense, without proving on the part of the Crown that the fishing for which the preparation was made was to be effected within the English waters—

Mr. MEAGHER. I don't know as it would be binding on your lordship then.

The COURT. I didn't say it would. I said, if it were binding on me. In the New Brunswick case this very point was decided the other way. I think they both agree upon what "preparing to fish" means. I think the New Brunswick case was decided squarely on the point that the Crown could not convict under that statute without proving that the preparation was for fishing within prohibited waters, while Sir William Young held that it was not necessary to prove and it was for the other party, although he does not say so, to prove that the intention was not in violation of the statute—to fish within prohibited waters.

Mr. GRAHAM. If my contention is sound, that the legislature was dealing with the preparation, then we must place the emphasis on the word "preparing" and that is the contention I make, and I think that was the fallacy of the New Brunswick judge that he limited the expression "preparing to fish" to the mere casting of lines. He was obliged to say that in order to bring out the theory that what the legislature was dealing with was fishing and to prevent that. But I contend that the legislature was not dealing with the question of taking a

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few fish, fish not being at that time or at the present time materially diminished in numbers by the catch within prohibited waters. It was the more important question of territorial jurisdiction and the right to prevent fishing vessels from coming into the harbor and making her preparations to fish. If that is the construction to be placed upon it, then the legislature is dealing solely with the preparations in respect to the harbors, bays and coasts.

Now I wish to refer to certain other decisions of the Vice-Admiralty Court with this view; that after these decisions were rendered and after vessels were seized and condemned in the Vice-Admiralty Court for preparing to fish under the statutes of the Crown and the statute of Great Britain, the Dominion Parliament passed an act in 1868, in which it uses the same expression "preparing to fish," and that construction having been placed upon it by the court prior to the act, Parliament must have ratified that construction by the use of that expression.

[Mr. Graham here read from Sabine's report the cases of *The Hart*, *Magnolia*, *The Charles* and the *Papineau and Mary*, which he contended were seized and condemned for purchasing bait.]

So that previous to 1868, when the Dominion Parliament was called upon to pass an act upon this subject, there had been seizures under similar statutes for preparing to fish and for purchasing bait, and when the legislature used the expression "preparing to fish," the expression it had used in the previous acts of this province as well as the province of New Brunswick and Prince Edward Island, it must have intended that a similar construction would be placed on the words similar to that which had been placed upon it by the courts under the previous statutes.

[At this point court adjourned until afternoon.]

AFTERNOON.

Mr. Graham resumed his argument at two o'clock.

The act of smuggling provides that the cargo is not to be brought on deck or to be removed in any way or shape until the vessel is at her port of destination; that liquors shall be carried in casks of a certain size so as to prevent the opportunity of smuggling. And our own provincial legislature wishing to destroy the sale of intoxicating liquors has enacted that no man shall keep a bar on his premises. Now keeping a bar is a perfectly innocent thing, the carrying of liquor in small casks—all these acts are perfectly innocent, but the law knowing that if it permits these things to be done, will not be able to prevent the greater offenses of smuggling and selling liquor without a license, prevents the inception of the evil and prohibits anything that may lead to it.

Judge Pomeroy in *The American Law Review* says: "Preparing to fish if permitted would render it almost impossible to prevent actual fishing—when from considerations of policy statutes are made to declare some final result illegal the legislature uniformly forbids the preliminary steps which are directly connected with that result, lead up to it and facilitate its accomplishments, etc."

So if it is to have only the restricted meaning as Judge Hazen gives it, of casting the lines, or even the broader meaning, the legislature in order to prevent the taking of fish in the waters, have prohibited them even from making preparations because it may lead to fishing within

the prohibited waters, and the question of intention would be quite irrelevant because the danger is just as imminent that they will fish within the three mile limit as it is that they will fish outside. So that the legislature has made these very preparations to fish, evidence that fishing will take place. As in the game cases, the legislature always takes good care to make provisions which will enable the courts to prevent an evasion of the law. They prohibit all acts that have any reference to the violation of the statute to poach; they deal with everything that may facilitate the carrying out of robbery. Now I want to refer your lordship to a previous point one moment. If the expression "preparing to fish" comprehends and includes the procuring of bait we can read that in the act and the act would say "if she is found fishing or procuring bait within such a distance of the coasts, bays, etc." It is my contention that when dealing with the word "fishing" the legislature was preventing the United States' vessels from fishing in her harbors and when it used the expression "preparing to fish" it is preventing them from procuring bait and otherwise fitting out in our harbors to carry on their fisheries outside or inside. What difference does it make? If procuring bait was an evil to be remedied by the legislature, and they do seem to have restricted them in that because they only allow them to purchase wood—if that is an evil to be remedied what difference does it make where they fish? If that was what the legislature was dealing with, namely, the fitting out of vessels and procuring bait to alleviate the competition of the United States vessels, what difference can it make where the vessels fished. They say you must not preoccupy our harbors, you must not come there at all. This is monopoly. In those times it was considered a good thing both on the part of the British Parliament and on the part of the United States that there should be a monopoly on both sides. If they regarded the purchase of bait as something they would exclude the Americans from it doesn't make any difference where they were to use the bait.

The COURT. You contend, in other words, that the statute prohibits the making preparations to fish anywhere.

Mr. GRAHAM. Yes, it comprehends the procuring of bait and doesn't make any difference where the bait was to be used at all, because the object was to prevent the procuring of bait. This test that I apply, of reading "procuring bait" instead of "preparing to fish"—as long as that is done within the three mile limit you will see that the forfeiture attaches. Or take the other test, that the legislature was preventing the preparation in the harbor and it makes no difference where the fishing is to be carried on. It was to prevent the vessel from coming into the harbor and there fitting out for the fisheries.

Now suppose that this term "preparing to fish" has the meaning which is contended for in the answer and that it means preparing within the three mile limit and that they can prepare within the three mile limit to fish outside of that limit. I ask your lordship to look at this evidence closely, and inasmuch as the burden is placed on the claimant, I ask your lordship to hold that he has not shown that the fishing was to be carried on outside of the three mile limit.

Now that provision of the act which places the burden upon the claimant will be found in section 10, chap. 61 of the acts of 1868.

What takes place in these cases and all revenue cases is this: The law provides for the master and crew of the vessel to do certain things or the vessel shall be forfeited and it provides for seizure. The seizure is made and the claimant comes forward and claims the property. It is in the possession of the law, it is forfeited and he puts forward a claim.

The legality of the seizure is then to be tried. Of course the form of the pleadings may be like the ordinary common law actions, as if it was between a plaintiff and defendant; but the question which your lordship is called upon to try is the legality of the seizure—was it a case where the officer was justified in making a seizure. And under all revenue laws the burden of proving the illegality of the seizure is placed on the claimant, and that is the exact language of this statute.

Now in *Clifton vs. The United States*, 4 Howard, 252, we have a similar provision and in the *John Griffin*, 15 Wallace, 29, the section with which the court is dealing is as follows:

"Section 71. That in actions, suits or informations to be brought where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case, the onus probandi shall be upon the claimant." In that case there was a conflict of testimony. It was a case of the seizure of cigars and the captain came forward and swore positively that the cigars were never aboard his vessel with his knowledge and consent and to his belief they were not there at all. He admitted an interview with the owner of the cigars in regard to a trunk and barrel package. He equivocated about the authorship of the letter produced by the owner, who was the principal Government witness, and said it might have been written by him and that it looked like his hand writing. Mr. Justice Miller in delivering the decision of the court, says: "The case, as thus made, amounts to something more than the probable cause, which by section 71 of the act of 1790, throws the onus probandi on the claimant of the vessel. It is a clear prima facie case and both by the statutes and the ordinary rules of evidence required of the claimant such testimony as should satisfactorily rebut the presumption of guilt which it raised."

Now this statute had no such clause as the statute of 1790, passed by Congress providing that there must be probable cause made out for the seizure.

The provision in the statutes of the United States, section 909, is that "in statutes or informations brought, where any seizure is made pursuant to any act providing for the regulating or collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: Provided, that probable cause is shown for such prosecution, to be judged of by the court."

In *Locke vs the United States*, 7 Cranch, 339, which was for the condemnation of a cargo forfeited to the United States, the counsel in argument said in the court below that "probable cause is prima facie evidence and whenever that is shown the onus probandi falls of course upon the other party." While the counsel on the other side claimed that probable cause doesn't mean prima facie evidence but simply reasonable grounds of suspicion. Now Chief Justice Marshall who delivered the opinion of the court says: "These combined circumstances furnish, in the opinion of the court, just cause to suspect that the goods, wares and merchandise against which the information in this case was filed, have incurred the penalties of the law." Then he recites the statute which I have read. He then says, "It is contended that probable cause means prima facie evidence, or in other words, such evidence as in the absence of exculpatory proof would justify condemnation. 'This argument has been very satisfactorily answered on the part of the United States by the observation, that this would render the provision totally inoperative. It may be added, that the term 'probable cause' according to its usual acceptation, means less than evidence which would justify condemnation; and, in all cases of seizure, has a fixed and well

known meaning. It imports a seizure made under circumstances which warrant suspicion. In this, its legal sense, the court must understand the term to have been used by Congress."

The next case was the case of the *Luminary*, 8, Wheaton 407. In that case a mere suppression was held to make out a probable cause for the seizure and to justify the court in giving judgment for condemnation. Suspicion rested on the claimant who had it in his power to make a clear case by producing his title deeds but refused to produce them and the vessel was condemned. Mr. Justice Story in delivering the opinion of the court says, "The suppression, therefore, justifies the court in saying that the United States have made out a prima facie case and that the burden of proof to rebut it rests on the claimant."

That is where there was no evidence at all but something that was kept back and it was held sufficient to justify the seizure and condemnation. In the 3 of Wallace, already cited, the court recognizes the rule of the onus probandi and says that it has always been regarded as a permanent feature of the revenue system of the country.

Now the burden, if your lordship pleases, is placed here on the claimant by the statute. The decisions which I have recited so far as the United States statute is concerned, which places the burden upon the claimant, show what kind of evidence the court will require before proceeding to the condemnation. They hold that suspicious circumstances, anything that leads the court to suspect that an infringement of the law was contemplated, even a suppression, will be sufficient to have judgment given against the claimant unless he removes the onus probandi which is cast upon him.

Now in reference to the facts of this case. I detailed the facts this morning and I do not propose to go into them very fully again. The vessel with the captain and crew on board are not in a position to give evidence of their intention or where they intended to fish. It will be seen that they fished anywhere they could get them. This vessel that fitted out for the Georges bank didn't go to the Georges. She went to three other places; she went to the Western bank and failed in the first instance in obtaining fish, then went to another place and then to Brown's bank. Suppose they had fitted out for one of these banks, could not be given in evidence that they intended to fish at any specific place, because they fish and their intention is to fish wherever they can. The master is not produced at all; he has not given any evidence in this case and none of the rest of the crew except these five witnesses have been produced. Four young fellows were examined in Boston and they are asked the question "Where did you intend to fish with that bait?" "Oh! We intended to fish on Brown's bank." They only mean that they intended to fish there if they could get fish, but if there was no fish there they would go to some other place. They were not tied down to any particular place. The vessel was in Eastport and procured bait there and comes over to the Bay of Fundy and the evidence shows that there was an opportunity for her fishing there; that a fleet of fishmen from Annapolis basin consisting of twenty or thirty vessels were fishing in the Bay of Fundy; that there is cod fishing within thirty miles of the shore and this vessel comes over and conceals her name. That is proved by a half a dozen witnesses and I do not use "half a dozen" in any loose sense. I say at least six witnesses have proved that the master and crew, who knew that they were doing an illegal act, concealed the name of the ship. And although the claimant called five witnesses, not one of them was asked in respect to cover or concealing the name of the vessel with that sail. The witnesses

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proved it conclusively, that there was a concealment, a suppression as
Mr. Justice Story called it in one of the cases I have referred to. And
then when the master is asked about this bait he concealed the facts in
respect to it. Perhaps that is owing to the fact that he thought it was
illegal, but he didn't give any satisfactory account of what he was do-
ing. He said he was up seeing an aunt of his. It was pretended after-
wards that that was a joke, that there was no aunt in the case. Then
he is asked for the vessel's papers, but he produced no paper to show
where he cleared for. Captain Scott demanded the papers from him
and he doesn't produce them and they are called for to day and not pro-
duced. It doesn't appear to have been a good month for fishing on the
Western bank and although they had been out three weeks—and the
average voyage is only three or four weeks—they had a broken fare and
with the desire to catch fish and the opportunity for catching them
within the three mile limit I think your lordship will not find that they
didn't intend to fish within that limit. I imagine there was no unwill-
ingness on their part to catch fish and the burden of proof is upon them
to prove that they didn't intend to fish within the three mile limit. Now
the witnesses were asked the question "Did you intend to fish within
the three mile limit; did you intend to use the bait within the three mile
limit" and they all answer "Oh no, we didn't intend to." Surely it can
not be that the claimant can satisfy the burden that is cast upon him
by giving such testimony as that. It is illegal and the intention has
nothing to do with it. The person who takes a horse quite innocently
but takes it without any leave is not allowed to say that he only in-
tended to do this or that or another thing; that he had no criminal in-
tent.

The COURT. In the case you put he would not be guilty of a criminal
offense. If he went into the stable at night and took the horse the fact
of his taking it would be prima facie evidence of the intent, but he
could rebut the fact by saying that he believed he was the owner of the
horse and had a right to take it.

Mr. GRAHAM. He could show facts, but here no facts are shown.

The COURT. I think it is evidence; but it is the weakest kind of evi-
dence.

Mr. GRAHAM. It is not evidence. They must show facts. The opera-
tions of one's mind, that is continually changing, surely cannot be evi-
dence. If it was there could not be a forfeiture under the statute at
all. A forfeiture could only take place in a very exceptional case be-
cause the preparations would always relate to the fishing outside.
They would come forward and say we never intended to fish on the
shore of the Bay of Fundy at all, we intended to go to another place
outside. That is all the evidence with respect to intention as to where
this fishing was to be carried on and I contend that they have not sat-
isfied the burden that it cast upon them in that respect.

Now, if your lordship pleases, we come to another point, and that is on
the point of fishing. It is a well known principle of law that a man is
liable for what he does by his agent. What he does by his agent he
does by himself. If the master of the *David J. Adams* employs an-
other person to catch fish, in law he catches the fish himself. I referred
to that evidence this morning and I do not wish to take the time to go
over it again. Of course, there is in this case the purchase of the fish
on Clements shore from Brown, and in each place and from each per-

son from whom the master purchased bait, he obtained a promise that they would supply him with a subsequent catch.

Mr. MEAGHER. There is no charge in the libel or petition that would cover an act of this kind at all, and therefore the evidence is not admissible.

The COURT. He is contending that the fishing of Taylor was the fishing of the master. One of the illustrations from the books is, a provision dealer said to a coachman you go into the preserves and kill rabbits and bring them to me in the morning, and I will pay you for them. You say the provision dealer was a poacher?

Mr. GRAHAM. Yes my lord. Keene says that he knew the vessel wanted bait from word being circulated round. Taylor says that he was at work at some gear in the evening, when the captain came to the fish house and told him to set his nets that night and he would take whatever he got in the nets that night. The nets were on shore when the men came there and the captain was to pay \$1.25 for the bait. He set his nets that night but only caught one quarter of a barrel, and then he and Keene put both of their lots of fish together and took them on board the vessel. Now in that case it makes no difference whether you pay for the fish in a lot or pay the man for his time. Your lordship sees how a law like this could be evaded. He needn't fish himself but can procure others to catch the fish. The law is aimed at fishing as well as preparing to fish and if I am not correct all he has to do in order to evade the law is to go to fishermen and say "Here you catch the fish" and so far as the bait question is concerned it would be altogether needless having any provision on that subject if that could be done. Now the captain goes to this person and tells him to set his nets and he would pay him. He pays him something like \$1.25 a barrel. The labor of catching them enters largely into their value. Now the law makes the person liable for what he does by his agent and for what he does by an innocent agent.

The COURT. The language of the statute is "If such *ship* or *vessel* be found fishing or preparing to fish etc." Suppose while the vessel was lying at anchor in the harbor the captain had gone out with Broom in his boat and caught fish in that boat with him and Broom had taken it away and sold it to another would that be an offense which would have forfeited his schooner?

Mr. GRAHAM. Yes, if the vessel is found fishing or the crew is found fishing. I am dealing with a stringent case. I believe in one of the cases in this court the fish were merely caught for breakfast for the crew.

The COURT. Yes, but I didn't meet with much favor in that argument.

Mr. GRAHAM. But she was condemned.

Mr. MEAGHER. Yes, but not for that offense.

Mr. GRAHAM. Now the principal who instigates an innocent agent to do what is unlawful for the principal to do, is guilty as principal. The captain told him to set his nets and he would take his catch and surely that is fishing by himself. He pays him for doing that thing. It is familiar law that where a principal employs an innocent agent to do what is unlawful for him to do himself, the principal is liable. There are cases of forgery where the guilty party procured other persons to commit the forgery for him, and the child that would not be responsible criminally, might be employed, and in that case the law would hold the principal liable for the act of the child performed in his service.

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Now I will pass, if your lordship pleases, to notice the other grounds of defense relied upon in this case. One ground is, that there was no knowledge on the part of the owner of the violation of the statute, and it is alleged in the answer that he had forbidden the master from entering prohibited waters, but there is no evidence of that. Neither the master nor the owner of the vessel has given any evidence in the case. So your lordship has nothing to give judgment upon and in the second place it is a bad defense in law because it has been held over and over again, both in the United States and in England, that that doesn't constitute a defense. The owner of the vessel may be perfectly innocent but if he places a person on board in charge of his vessel and that person infringes some revenue law the vessel is forfeited. Innocent owners of a cargo suffer sometime by the wrongful act of the master. (*Phile vs Ship Anna*, 1 Dallas, 197; *The Bello Corrunes*, 6 Wheaton, 152; Bishop on Crim. Law, 826.)

It is no matter what the intentions of the owners are, if the act is committed by the master the forfeiture attaches.

Now there is another point suggested in the answer and that is that the Canadian statute was beyond the powers of the Dominion Parliament. I do not know, really, whether that is intended to be raised or not seriously, but I judge from what my learned friend said this morning that it is.

There is no question but that the power was delegated to the Dominion Parliament, because under the British North American act the Parliament of Canada has the power to legislate on all these subjects, to deal with navigation and shipping, sea coast and inland fisheries.

The COURT. The act of last winter which goes further than any previous act was assented to by the Crown. It is not in force in this case but shows how the government of the country and the law officers of the Crown view this question of *ultra vires*. I am expressing no opinion about it.

Mr. GRAHAM. It is plain that the British Parliament in passing the British North American act has given the Dominion Parliament power to legislate on these subjects, and the same section gives it power to legislate on all subjects that are not exclusively reserved to the local legislatures of the provinces. It has the power so far as the Parliament of Great Britain can give it power. I suppose it would not be denied that the Parliament of Canada has the same power, if not greater, than the provincial legislatures had previous to the British North American act. The statute passed by the province of Nova Scotia, which is exactly similar to this, was attacked upon that ground, viz: that the provincial legislature had not power to make provisions in respect to United States fishing vessels coming within the territorial waters of the provinces. That was the case of the *Creole* for infringing the fishery act 1836. The *Creole* was a vessel that formerly belonged to American citizens but whether to evade the fishery laws or not, I don't know, was in 1853, transferred to some person claiming to be a British subject in the United States; she came within the territorial waters and violated the provisions of the Nova Scotian statute. It appears, however, that on some question respecting the ownership the vice-admiralty court decreed that the vessel should be released. The Attorney General was not at all satisfied with the decision of the vice-admiralty court and he consulted the law officers of the Crown in England. I do not ask your lordship to be bound by any opinion given by mere officers of the Crown, although one of them was Sir Alexander Cockburn afterwards Lord Chief Justice and anything he said in his judicial capacity would be binding. [Mr

Graham here read from the opinion of the law officers of the Crown in the case of the *Creole*.]

Now, so far as that opinion goes, certainly, it was dealing with the point I am now considering, which is the power of the Provincial legislature to pass laws in respect to the matters embraced in the Dominion statutes upon which this action is partly framed. And certainly upon a good ground: namely, that the Provincial legislature had power to pass an enactment in reference to its own territory, anything within three miles of its shores, and if the Provincial legislature had that power, and these powers were certainly given to the Dominion Parliament, I contend that this act which we are now considering is valid and binding and that United States vessels coming within the three mile limit, irrespective of the convention, supposing the act is broader than the convention, are liable to forfeiture if they infringe any of its provisions.

Mr. MEAGHER. Your contention is that the Dominion legislature could legislate to such an extent as to infringe upon and take away some of the rights given by the treaty?

Mr. GRAHAM. Not at all, but I say the court cannot consider whether the treaty has been infringed or not.

The COURT. If the English act did infringe the treaty this court will be obliged to follow the act and let the government deal with the other question.

Mr. MEAGHER. I only wanted to get Mr. Graham's contention as to the Canadian act.

Mr. GRAHAM. I contend that it had the same power as the Provincial legislature and that when the Parliament of England delegated that power to pass laws in respect to all subjects it gave the power to pass the act we are now considering.

Now, there is another defense set up here and that is, that the order in council, put in evidence by the counsel for the claimant operates as a repeal of the Imperial statute. That was an order in council passed under the imperial act of 1825, an act to regulate the trade of the British possessions abroad. [Reads the act and the order in council.] Now, the contention must either be that this order in council is a repeal of the English act or that the *David J. Adams* was not a fishing vessel. The evidence is overwhelming in this case that the *Adams* is a fishing vessel. The admission on the record is that she was a fishing vessel. She was constructed for fishing; she was engaged in fishing and we know nothing else about her but that she was a fishing vessel. Now this statute deals specifically with the question of fishing vessels and their rights or their privileges in British waters. The order and council is a general provision and applies to vessels exporting goods from the British possessions abroad. It applies to all vessels other than fishing vessels. The fishing question is a specific one which the statute of 1819 deals with specially. Now, if the fishing act was a specific one with which the English statute dealt solely and we have a general provision applying to vessels exporting goods, then the well known principle of construction of statutes applies, that the general act in such a case is to be construed as not repealing the particular one. (Maxwell on the construction of statutes, 42.) The order in council gave the authority to deal with trading vessels to export goods from the colonies to any foreign country whatever. The contention of my learned friend is that that gives authority to go in and buy bait. I say there is no repeal because it is perfectly consistent with the act relating to fisheries that the order in council should be passed, and we know from history

that it was passed in relation to trading vessels giving them the right to export goods to other countries without any repeal of the act respecting fisheries. I think this is no case of doubt but I think in a case of doubt if the general act is passed subsequent to the special act it will not repeal the special act because the general act will cover other cases not provided for in the special act.

And the very history, if your lordship pleases, of this treaty of 1818, shows that there was no intended repeal of the act or of the convention itself; that they didn't intend in any way to abrogate the convention of 1818. Because in that very convention that prohibited fishing vessels from entering our bays and harbors, they proposed to insert in that treaty a clause just as broad as the order in council that was framed years afterwards in 1830; and that clause they proposed to put in in addition to the stringent provisions against fishing vessels. The American plenipotentiaries were anxious to remove the non-intercourse existing between the British Colonies and the United States. "And they shall likewise have liberty to export in the same manner, any other article of the growth, produce or manufacture of the said province the exportation of which to every foreign country shall not be entirely prohibited." This provision was to give the United States liberty to export goods, products, and manufactures, the exportation of which to every other foreign country was not entirely prohibited. So, that so far from it being inconsistent with the convention and with the act of Parliament, which we are now considering, we find it entering into their negotiations at that time; that they proposed to put in a clause in almost the identical terms with the order in council, side by side with the clause prohibiting vessels from coming into our ports, in the convention of 1818. At that time they were anxious to secure trade for their ships; they were anxious to import goods from the West Indies, the good Jamaica rum and articles produced there, and they were anxious to supply the British West Indies with goods; they were anxious to get goods that were produced in these provinces at the time and they were doubly anxious to have employment for their vessels but it was not until this order in council was passed that these objects were secured.

Now, that article that I have referred to was not inserted in the convention of 1818, because the negotiation fell through. They couldn't agree about it and it was not until 1830, when President Jackson through Mr. McLane obtained the removal of the restrictions on commercial intercourse, that the order in council was passed.

But, if your lordship pleases, if you take the language of the order you will see that it never applied to fishing vessels because they were to export goods from British Possessions to be carried to any foreign country whatever; and the negotiations and all the correspondence relating to the McLane arrangement, so called—because he was the American minister and negotiated it in London—show that the parties were not dealing with the question of fishing vessels but with the question of trade and trading vessels, giving them the right to import goods into the colonies and provinces of British North America and to export goods.

The correspondence and President Jackson's message to Congress in 1830, will be found in the same volume I have already cited, page 2 of the appendix. I refer to these for the purpose of showing what was the history of the order in council which my learned friend has produced in evidence for the claimant to-day. It was a matter upon which he congratulated Congress that after five or six Presidents had failed he was the first to bring about intercourse between the British possessions

and the United States. In the treaty of 1815, there was no provision made for the American colonies. It was not until President Jackson undertook the task that this result was brought about and the order in council that my learned friend has put in was made on the part of Great Britain and the proclamation of President Jackson on the part of the United States. The whole history of the arrangement shows that they were dealing solely with trading vessels and not once are the rights of fishing vessels mentioned in all the correspondence and negotiations.

Now the two classes of vessels differ widely; for fishing vessels they have a license to engage in fisheries while for trading vessels they have a system, similar to our own, of registry. The United States has always recognized a distinction between these two classes of vessels and their decisions, if your lordship please, show that this distinction is recognized. Under the American decisions a vessel engaged in the fisheries and licensed therefor was always prevented from engaging in trade; there was a penalty and forfeiture attached if she engaged in trade. The fishing vessels came down to our shores and purchased goods, came in and got supplies and then the question came up under the American statutes in the courts for the United States, whether that was engaging in trade or not, and it was held by the court that that was incidental to the fisheries, that it was not importing or exporting, and was not trade at all.

Take the case of the *Nymph*, 1 Sumner, 516, which was the case of seizure of a vessel licensed for the cod fisheries, and one of the charges was that she was employed in a trade other than that for which she was licensed, contrary to the coasting act. Judge Story says: "The next question is, whether the license in the present case, for employment in the cod fishery, includes within its scope a license for a distinct employment in the mackerel fishery. Notwithstanding the ingenious and able argument of the counsel of the claimant, I am decidedly of opinion, that it does not; and I will now proceed to give the reasons for that opinion. A license to be employed in the cod fishery, *ex vi terminorum*, cannot include any right or privilege except those, which are incident and belong to that particular branch of trade. The license confers on the party whatever is necessary and appropriate to that trade; for a right to carry on any business naturally includes all the usual and customary means, by which the end is to be accomplished. The right to dig, purchase, and use clams, or other bait, to purchase and transport salt, and procure other reasonable equipments for the voyage, are therefore clearly within the scope of the license."

Now, under the fishery license they could always procure these supplies without it being considered any violation of the statutes relating to the license of the vessel. It was not considered trade at all. The vessel, although she purchased supplies and purchased bait, was not trading. (Desty on Shipping sect. 28.)

Adjourned.

SATURDAY MORNING, June 4, 1887.

Mr. GRAHAM. My lord, in order to bring the arguments to a close to-day I do not propose to enlarge upon the point I was dealing with yesterday any further than to say if, as I contend, the order in council is consistent with the Imperial act respecting fisheries, there is nothing inconsistent in the Dominion act because the Dominion act is in almost precisely the same terms. The same language is used; we have the

term "preparing to fish" in the Dominion act as well as in the English act. As a matter of course the Dominion Parliament has power to pass any legislation in respect to the territorial waters of the Dominion, not infringing on any of the statutes of the Parliament of Great Britain. [Reads from Judge Pomeroy's article, page 414.]

These remarks of Judge Pomeroy are based solely upon the treaty of 1818. It is suggested that it is possible that some provisions in the commercial convention between the United States and Great Britain might require some modification of his conclusions. I have endeavored to show that the order in council and proclamation of the President upon which the intercourse is founded doesn't conflict with the fishery act, and therefore his remarks hold good in respect to the power of the Parliament of Canada to deal with the subject of excluding vessels from purchasing supplies.

Now we have no right, I suppose, to invoke the statutes of the United States against the *David J. Adams*, but certainly she is not entitled to the favorable consideration of the court, for if it be trading, as my learned friend will contend for the defense and as he has contended in the answer, then under our own laws she has no right whatever to purchase bait because she has no right to engage in trade. She was not even possessed of the document permitting her to touch and trade that was produced in the case of the *Doughty*. She is not entitled to the favorable consideration of the court inasmuch as quite irrespective of the statute law she has violated plainly the terms of the convention, and by the Constitution of the United States that convention is as binding upon her as any statute passed by Congress.

I do not intend to repeat anything I said yesterday but I will say that the vessel *David J. Adams* should be condemned because she was making preparations to fish and was engaging, as I contend, in actual fishing within prohibited waters.

ARGUMENTS FOR DEFENDANTS.

Mr. N. H. MBAGHER began the argument for the defense at eleven o'clock.

If your lordship please, I regret that I shall be obliged, in view of the lengthy argument made by the learned counsel for the prosecution, and the questions raised by the pleadings, to take up a great deal of your lordship's time in dealing with this matter. In the first place, perhaps, it would be best for me to refer to the evidence relating to the *David J. Adams*. I suppose your lordship has since yesterday probably read the evidence.

That evidence shows this: That this vessel fitted out for the Georges. Now, if you will refer to the evidence of Roberts, line 1570, you will find the expression that whenever a vessel is fitted out, hand-lining for any of the banks, it is a general term that is used, and it does not follow that they are going to the banks but going to fish. The learned counsel seemed to make a point of that yesterday in connection with the fact that it was shown she was fitted out for the Georges. I only offer that in explanation of that evidence.

Now, what the effect of section 10 of the act of 1868, may be I will deal with hereafter, but I want to call your lordship's attention to this fact. The pleadings were obtained in this case on application of the Crown. The Crown has thought proper to file pleadings alleging a

certain state of facts and we have filed an answer to that petition denying what the defense thought were the material allegations of the petition, and upon that an issue on the part of the Crown has been taken, and so far as the pleadings stand the Crown has assumed the burden of showing that this vessel had violated the provisions, not merely of the treaty, but also of the Imperial act and the Canadian acts on the subject. The terms and meaning of the statute I will deal with presently.

Now, your lordship will see from the evidence given at Boston and the evidence of Roberts given here that this vessel fitted out and went out on to the Western or Brown's bank and fished there and caught a quantity of fish. That she subsequently put into Eastport for bait; she got a small quantity there, all she could get, and then came to Digby and got the balance that she required for the purposes of the voyage. Now, in that connection I want to refer your lordship to line 1850, where he says: "We had left Eastport that morning; went into Eastport for bait; got some, couldn't say how much; two or three barrels more or less; I didn't handle it and don't know; got all we could." That is elicited from one of the witnesses on cross examination by the learned counsel. Now that shows that there was a necessity for her going to Eastport for bait; that there she got all the bait that was available, and not getting all she required she came to Digby and got what was necessary for the completion of her voyage.

Now, as to the fishing. Assuming for the sake of argument that the burden is upon us in that respect. I submit that if it be, though I shall contend otherwise, that we have completely met that burden as to fishing unless the contention made by the learned counsel in respect to the arrangement made with Taylor will put the burden the other way.

Now, the evidence of Roberts and all the witnesses called for the defense, which is uncontradicted, is that they were fitted out to catch codfish and halibut, hand-lined fishing; that they caught codfish and a few halibut on the Western banks about ten miles from Sable island, which would be forty-five or fifty miles from the main land; that they did not catch fish anywhere else on that voyage; that they tried to fish at Brown's bank on the southeastern edge; that the three places spoken of were the only places where they tried to fish; that they dressed, split and salted the codfish, and dressed and iced the fish as soon as they got through fishing. The evidence also shows that it was on the banks where they fished, where they tried for fish, and where they did everything that was done towards temporarily preserving or permanently curing the fish that were caught. If the burden under the law is upon us in that respect I contend that we have entirely satisfied it.

The COURT. Do you think the evidence that they did not fish within the three-mile limit but fished elsewhere is a rebuttal of the presumption founded upon the fact of preparation to fish?

Mr. MEAGHER. Yes, my lord. It certainly does this, it fully answers any charge of actual fishing.

The COURT. I am not speaking of that now. Assuming that there is no evidence of fishing in fact, but only evidence of preparation to fish.

Mr. MEAGHER. I have not come to that. I am dealing with the question of actual fishing, and I say that so far as actual fishing is concerned, if the burden be upon us, we have sustained that burden.

Now, the only ground upon which the learned counsel claims there was evidence of preparing to fish arises from the fact that bait was bought there and ice broken up to put upon the bait. Now, the very

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fact of breaking up ice and putting it on the bait for the purpose of preserving it shows an intention to fish elsewhere and to fish at some distance. You have the primary evidence that the vessel was fitted out for bank fishing, a distance remote from the limit. Taking first that fact that she was fitted out for the banks; that she went to the banks and did fish; that she went to Eastport for bait to continue that fishing and not getting all she wanted or needed, for the purpose of returning to complete her voyage, she came to Digby for it, I say taking all these facts with the breaking up of ice to preserve the bait shows that it was not intended for immediate use. If it was intended to be for immediate fishing on the coast and shores of Nova Scotia the presumption would be they would not do that because there could be a supply obtained every day.

Still further, I think the evidence shows that there was no opportunity—at all events no opportunity within the limit in the vicinity of Digby and Annapolis basin that would make it worth her while to pursue fishing there. On that point I call your lordship's attention to the cross examination of Owen Riley. There is another fact, if the vessel went codfishing within the limits of Digby a large portion of her gear would be useless. She was fitted for both cod and halibut fishing but the gear intended for halibut fishing would lie idle. The evidence establishes the fact that there was no fishing there to make it worth this vessel's while, that is within the limit, to pursue her voyage and that, coupled with the fact that she had fitted out for another and different place before she came to Digby, rebuts any possible inference that could be drawn from the fact of her coming there to buy bait.

Now, it is true that Broom, one of the witnesses, does attempt to show [780 to 785] that there were opportunities there to make it worth their while to fish and yet when he comes to the cross examination you will see that it amounts simply to hearsay. He had little or no experience and he only speaks practically from hearsay; so that his evidence, as far as his direct testimony is concerned, will not affect the case. He says "when I saw her take down the jib she was well down to the gut. The last I caught there was four years ago. Once fished with a man for a week. A half a dozen times would cover all my experience there. Never caught halibut there and never saw them caught. Only know from hearsay that they were caught. Never saw much fishing there, I speak partly from hearsay. The general business of codfishing is done more than three miles from the shore."

Now, if any importance is to be attached to that at all, it helps to corroborate the evidence of Riley and substantiate the contention I am making that there was no fishing there—that there was no fishing in that vicinity, within the limit, that would make it worth their while in view of the place where she was fitted out for.

Now, the learned counsel contended, or rather laid a good deal of stress on the fact, that apparently there was some attempt made at concealment and that the captain made statements that were not founded in fact. Now, my lord, it seems to me these facts, if they be such, have no bearing upon the case. The fact that he said he had no bait on board would not establish any inference that he had been fishing or was going to fish within the limit or the fact that the name of the vessel was concealed. But, if you will look at the evidence I think you will conclude that it was not an attempt to conceal the name. It only shows, if my recollection of the testimony is correct, that in the morning when she passed the pier there was what appeared to be an old sail hanging about a foot down from the bulwarks. The witness further says that

there was a piece of canvas hanging over the stern which partially concealed the name; that is, he says, he only read *David J.* More than that the same young man says that when he went on board he asked the captain where the vessel was from and he told him it was the *Adams*. Now that is the part of the name that they say was concealed at that time. The captain could have no motive in concealing it when he voluntarily told the young man what vessel it was and gave him the information that the sail if intended for that purpose would otherwise have concealed from him. Assuming that the captain did conceal the name and make a misstatement about the bait on board it simply shows that he may be untruthful and nothing more. I cannot conceive on what theory the fact that he told an untruth would have in bringing about the condemnation of this vessel. The American case that the learned counsel cites about suppression was this. There, it was a question of ownership of the vessel, when the title changed, and documents proving the title which would have shown it were kept back. Now this captain did, when he was intercepted by the officers of the *Lansdowne*, give him the name of the vessel, where she was from, the owners name, and all the particulars necessary, on the very first occasion of his visit. Your lordship is familiar with the bankers and you know that there is a plank called the davit plank which extends from one to the other and on that it is a customary thing for them to put their dories, their riding-sails and their gear. Now, there is no evidence to show that that sail might not have been there accidentally, and I think it was, from the fact that after the first morning he was in there it did not remain there in such a way as to conceal the name or home of the vessel. It seems to me it would be carrying the contention a long way to say that because the captain lied therefore he must have fished, or therefore his intention was to fish within the three mile limit.

Mr. GRAHAM. It is like the poacher blacking his face.

Mr. MEAGHER. I do not think so. Now, your lordship knows that there is such a difference between the appearance and build of American and Nova Scotia vessels that they can be distinguished quite readily and some of the witnesses say that they knew she was an American vessel. If that is so there would be no object for concealing the name of the vessel. If, from her rig and build, they could see that she was an American vessel then there would be no reason for her concealing her name.

The COURT. I do not know how it is now but it used to be a common thing to have American vessels under a Nova Scotia register.

Mr. GRAHAM. The captain told Ellis that she had been an American vessel but had changed her register.

Mr. MEAGHER. I say that what was done by the vessel while in the basin is perfectly consistent with no violation of the statute. In corroboration of the contention I am making your lordship will observe that the bait was all bought openly and went aboard the vessel in an open manner.

Now the learned counsel seemed to lay great stress on the point that the captain of the *Adams* was not called as a witness. Your lordship will remember that I applied for a commission to examine the captain and owner and the learned counsel appeared and resisted the motion so far as the examination of the owner and master. Of course all the owner could have testified to was as to the statement in the answer that he had prohibited the master from entering any British port while on that voyage. Your lordship will remember that when I explained to you that that was the only fact that I expected to

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prove it was said that it would not be strictly evidence. But with respect to the captain I sought a commission to take his evidence at his home in his own country. That was refused. I am not saying that under the circumstances it was not properly refused. But we had no means of bringing him here. He is not under our control and has not been since he left the ship. We cannot take him by the ear and bring him down here and compel him to give up his business and attend this trial. There is no law that can bring him here and therefore, for that reason alone, are we today without his testimony. And after the effort of the learned counsel had been successful in preventing us from getting the commission to examine him abroad I think it was pressing it a little severely to complain that we had not called him. He knows as well as I do, and probably a good deal better, that we couldn't get him here.

Mr. GRAHAM. You brought Isaiah Roberts here.

Mr. MEAGHER. Isaiah Roberts was living within the province of Nova Scotia and we brought him here on a subpoena. He was a resident of Argyle. The captain knew that the learned counsel had a judgment against him and for that reason he might have been a little reluctant to come. What is the result? The counsel says the burden of proof is upon us to show our innocence and then a course is taken which has the effect to prevent us from getting the evidence of the captain and now the learned counsel urges against us the fact that we did not call him as a witness.

Now, I do not think that I shall trouble your lordship any further on the question of fishing except to refer for a moment to a statement by my learned friend yesterday as to Taylor's evidence. Let us see the extent to which that goes. Your lordship will see that that took place on shore. He says at line 1419 [reads Taylor's testimony].

Now, I am only going to deal at present with the quality of evidence. I submit that there is none of the elements of hiring in it and it is evident that the witness used the word "told" in the light of answering a question, as equivalent to "said." "He first asked me if I had any bait and I told him yes. He then asked me to take it aboard his vessel. He then told me to set my net that night and said I will take whatever you get in the net tonight." The captain of the vessel knew from having been at his fish-house and having got bait from him before that that was his business. The evidence given as it is was simply this "If you set your nets tonight and get any herring I will take your catch." I submit that it really does not and could not go beyond that. The captain knew, as I have said, that he was dealing with a man whose business it was to pursue that work and it was simply equivalent to saying to him "If you get any herring in your nets tonight I will take them." There was no hiring about it, there was no price fixed, there was no limit in any way put upon it, there was nothing said as to when the herring should become the property of the captain and there were none of the terms, particulars or elements of a bargain in it, at least none are detailed here. Moreover if you take it to amount to a bargain it was not a bargain that could by any possibility have been enforced. I mention that point to show that it really did not within itself contain the elements of hiring or a special bargain beyond saying "If you set your nets and get any fish I will take them." It did not change the relative position of the parties in the slightest degree. It did not impose any obligations on Taylor to set his nets that night and if he did and went with the fish to the master the master was at liberty to take them or not as he pleased. Of course, I admit that an arrange-

ment might be made by which the provisions of the statute might be violated in that way but I think all I need say at the present moment is, that the evidence here does not come up to that mark. That might be the case where the hiring was made for a regular employment in the fishing business, the profits from which were to go to the American vessel, but that does not exist here.

Now, when the learned counsel mentioned that point yesterday and referred to the statute your lordship mentioned the point which I think is a complete answer to that contention, especially in view of the pleadings. It seems to me if the learned counsel intended to rely upon a fishing of that kind, then he should have alleged in his petition, not merely that we had fished but that the captain had come there and in violation of the statute had employed others to fish. There is nothing in the petition which would indicate to us a hiring of other people to fish, nor anything that would indicate a fishing outside of the ship or vessel or by other parties than those aboard the vessel and it seems to me that to allow this fishing by others to be proved would be going beyond the allegations in the petition.

In connection with that I want to call your lordship's attention to sect. 2 of the English act:

"It shall not be lawful for any person or persons not being natural born subjects of His Majesty, in any foreign ship, vessel or boat, nor for any person in any ship, vessel or boat, other than a ship navigated according to the laws of the United Kingdom of Great Britain and Ireland to fish for, or to take and dry or cure any fish of any kind whatever within three marine miles of any coasts, bays, creeks or harbors whatever."

Now, I submit that that must be a fishing directly in connection with the vessel herself and it cannot be tortured into anything beyond that.

Now, I shall deal with sect. 10 of the act of 1868:

"In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorized to seize under this act, oral evidence may be heard thereupon, and the burden of proving the illegality of the seizure shall be upon the owner or claimant."

Now, by sect. 7 any penalty or forfeiture under this act may be prosecuted and recovered in any court or vice-admiralty within Canada.

Referring back to sect. 2 of the Imperial act it will be found, [reads the section].

Now, your lordship will see that the court of vice-admiralty was given jurisdiction to deal with this matter. That court already had a well established practice as to the way in which evidence was to be taken and there was no necessity at the time the act of '08 was passed for such a provision. Evidence could be taken in any way in a vice-admiralty court if the intention was that it should apply to the trial of the case itself and oral evidence be taken. Now, I think that was intended rather to apply to a question that might arise when the claim was presented. Oral evidence might be taken in respect to that claim on a variety of questions and I think in view of the fact that by a previous legislature, jurisdiction was given to the vice-admiralty court according to the customary mode and practice of taking evidence in that court, that there was no necessity of making this provision at all with respect to the evidence if it was intended to apply to the trial of the main question in dispute. That was all provided for and I cannot imagine, as I said before, that the legislature intended it to be applicable to the main question in the case. If your lordship will look at other statutes of a

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similar nature where it is intended to put the burden of proof on the party claiming it you will see that very different words are used. Let me call your lordship's attention to sections 228, 231, 233 and 234 of the Revised Statutes of the Dominion. As I said before if the intention was to put the burden apart from the claim, upon the respondent, I think they have departed from all usual modes of doing it and have done it in a very clumsy way. [Mr. Meagher read the sections of the Dominion Revised Statutes above referred to.]

The COURT. Every word of these simply means the same thing that the burden of proof is on the plaintiff.

Mr. MEAGHER. I submit that the words used there "whether the seizure has or not been legally made" may mean something in point of form. I ask your lordship to bear this in mind; certain persons are authorized to seize and certain persons only. It may refer to two things. Suppose the seizure was outside of the limit where a question would arise as to the right to seize or the question might arise as to whether the party who made the seizure was a person authorized and qualified to make it. I say that can be given effect in respect to these two things and yet not throw the burden of proof on the main question upon the party claiming it.

The COURT. Is not our inquiry to-day whether this vessel was lawfully seized.

Mr. MEAGHER. No, I do not think it is necessarily. It might be if a question was raised such as I have suggested that the seizure was not made by a proper person or within the proper limits.

The COURT. You on behalf of the claimant ask that this vessel be delivered to you on the ground that she was illegally seized. They say why. You say because she violated no law which authorized you to seize her.

Mr. MEAGHER. What intention had the legislature in deliberately departing from the well settled provision in cases of this kind where they want to throw the general burden of proof on the party defending.

Now, in our statutes and in the United States statutes where it is intended to throw the general burden of proof upon the claimant the words "burden of proof" generally, or "onus probandi" or some equivalent expression was used. After these other statutes have been enacted and have been in force and in common use for a long time, we find the legislature deliberately departs from that customary mode and uses an expression entirely different. And not only that but it leaves out what shall be the effect of averment in pleading on the part of the prosecution. Now they must have had some purpose, some object in view in doing that. Now, I submit that your lordship must start with the fact in view that the legislature has departed from the accustomed mode of expression which would have the effect of throwing the burden of proof upon the defendant generally and if you can from the words of the statute itself give it a meaning otherwise, then I think your lordship would be justified in saying that it referred only to the two special purposes or other special purposes and not to the main question in the case.

Now, your lordship will see following right on that section I have referred to "actions against officers." Now that section may refer to that where an action is brought against an officer.

Mr. GRAHAM. There is no claimant in such an action.

Mr. MEAGHER. I assume that the word claimant is used in a general sense, he is claiming damage against the officer for an illegal seizure.

Why were the words "oral evidence" inserted in that section when by a previous legislature, by the imperial act the whole practice of the vice admiralty court could be resorted to in the trial of the case. I submit that it refers to the time when the claim is introduced. "Oral evidence may be heard thereupon." What is the object of "thereupon," it must mean the time the claim was made, that he shall with his claim submit such evidence as would raise a *prima facie* case in his favor otherwise his claim to defend will not be admitted. I say a reasonable and sensible interpretation of that section can be given in that way.

But apart from that I call your lordship's attention to the fact that the Crown has taken the burden of proof, has taken the affirmative here by the pleadings. There is nothing in the act which provides that a mere averment of certain things shall be sufficient unless the contrary is proved.

Now section 3 of the act of 1868 says: "If such ship, vessel or boat has been found fishing within three marine miles etc. without a license etc. she shall be forfeited." Now whether or not the party would be obliged to show at the time he made his claim that he had a license or whether his license had expired before he should be admitted to defend in that action, is another point which I think shows that the statute may be read in this light.

Now assuming that this section goes the length that is contended for by the other side, that is that it throws the entire burden of proof in every particular, no matter in what shape the pleadings may be, on the party defending, I call your lordship's attention to the fact that there is no such provision at all in the imperial statute. Now I submit if it has the effect claimed for it it was beyond the power of the Dominion legislature to pass it.

In dealing with that I must refer to the British North American act and I would like to call your lordship's attention to the recitals in that act as showing the purpose for which it was intended. Now I submit that this effect cannot be given to that act, namely, that it took away from the Imperial Parliament any power that it then or previously had in the matter of legislation. It was simply putting in shape an agreement to which the various provinces had become parties and was intended only to regulate the respective powers that the Dominion and several local legislatures should have as between each other and was not intended to concede or yield to the Dominion legislature any power the Imperial Parliament had to legislate. I say that must be kept in view in construing the words that the learned counsel referred to yesterday to be found in the act, the section which says that they shall have the power to deal with navigation and shipping. That is quite correct as between the local and Dominion legislature and that is all the act proposes to do; because if it went any further than that it would be abrogating the power and be yielding up to to the Dominion legislature the power that the Imperial legislature had in these matters. [Reads section 132 of the British North American act.]

That gives the Canadian Parliament all powers necessary or proper to enable them to perform the obligations of Canada or provinces thereof under treaties between the Empire and foreign countries. But it didn't give them the power to make any such legislation as would infringe upon any rights acquired by any treaty or abrogate any part of the treaty or impair it so as to render it valueless to the people of the country with whom the treaty was made.

The COURT. I think so far as I understand you I concur with you in that view.

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Mr. MEAGHER. Now I say if the Canadian Parliament had the power to enact a provision of the effect contended for, it could go on further and place such burden upon vessels coming in here as would entirely destroy the rights given by the treaty. If they have the right to show that the burden of proof shall rest upon the claimant can they not go a step further and say that none of the owners and none of the men connected with that vessel shall be competent witnesses to establish their innocence in respect to the charges made? They could go further and say that ten disinterested witnesses should be required to establish the burden of proof, that the burden of proof which is put upon them shall not be satisfied until they call ten disinterested witnesses. Now that would be an impossibility, so that it would only be necessary that a vessel should be seized and in nine hundred and ninety nine cases out of a thousand a condemnation would inevitably follow.

The COURT. If they should do that would not cannon be the argument instead of a legal discussion? Suppose the Dominion Parliament did all that you say, violated every principle of justice in the manifest open attempt to exclude all vessels of this character from our ports, should we not be obliged to recognize the enactment in this court if it was constitutionally within their power to pass it?

Mr. MEAGHER. Precisely so, and I refer your lordship to section 132 which imposes upon them the obligation to carry out treaties made with foreign countries and I call your lordship's attention to the fact that there is no provision giving the Canadian legislature the power to abrogate the treaty or to enact such legislation as would render the advantages given by the treaty valueless. The fact that the section was put in the act, expressly imposing upon them the obligation, so far as Canada was concerned, of carrying out the provisions of any treaty made between Great Britain and a foreign country, shows that they didn't intend to concede to Canada the right to infringe or to make such legislation as would infringe, or otherwise interfere with, any advantages which the treaty gives. I submit that if it were otherwise it might be carried to its full extent and destroy any right of entry by these vessels whatever. Enact legislation of the character that I have mentioned and no vessel could prove her innocence and if she could not prove her innocence she would be in peril of confiscation if she came in here.

The COURT. That can be done to-morrow under the customs act. If she comes in here and is seized for an alleged violation of the customs act and could not prove her innocence she would be condemned.

Mr. MEAGHER. I put a case further than that; I put a case which disqualifies the master, officers and crew of the vessel so that they could not possibly prove their innocence.

The COURT. You might as well put a case where the claimant should be obliged to prove his innocence and not be allowed to call any witnesses. I do not understand that because the abuse of power might happen it is any argument against such power existing; it may be an argument against allowing it to continue to exist or for putting restrictions upon it, but the mere fact that the Dominion Parliament may have abused a power is no evidence that such power does not exist.

Mr. MEAGHER. Is there anything in the treaty or the act of Parliament which provides for placing the burden upon American vessels? Was that power given them or intended to be given them by the British North American act to enact a statute that would have the effect of taking away the privileges conceded by the treaty? For example, a vessel is permitted to come in, we will say, for four specified purposes.

According to the learned counsels contention yesterday, evidences of intention as to what they came in for could not be given.

There are many instances where it would have to be on the intention entirely. Now they have a right to come in here for at least four specified purposes. If the Dominion legislature goes beyond, and I submit it does go beyond, the provisions of the treaty and passes an act throwing the burden upon them, I say it may put the American vessels in such a position that they could not justify their entries here even for any one of the four specified purposes; and to that extent the privilege given by the treaty would be abrogated and I say that is a power which the British North American act didn't give to the legislature of Canada. It gave it the power to perform the obligations of Canada but didn't give it power to take away the provisions of any treaty. The treaty-making power doesn't exist in Canada. Canada could not tomorrow make a treaty with any foreign power without permission of the British Government and if they could not make a treaty it seems to me they can not pass legislation that will in effect destroy it.

Now we had yesterday a good many State papers referred to. I am going to refer your lordship to one on that point. Lord Salisbury in a letter which will be found on page 4 of the Fishery correspondence, in speaking of the question whether or not the Newfoundland legislature could enact laws which would affect treaty rights says: "On the other hand her Majesty's Government will readily admit what is, indeed, self evident, that British sovereignty as regards these matters, is limited in its scope by the engagements of the treaty of Washington which can not be modified or affected by any municipal legislation."

Now there were certain rights given to the American vessels to enter here and no burden of proof was placed upon them by the terms of the treaty, which would have the effect, as such a statute necessarily would have, of placing greater burdens upon the American vessels coming here.

The learned counsel says that they had the power to make certain restrictions. That, I submit, means police regulations or other regulations of that kind. It may be that a power to enact such a statute exists in the Imperial legislature but I don't think it has been given to any colonial legislature. At all events we need not go that far, because the effect of such a statute would be, that that which under the treaty was permissible and could be done without fear of any violation of law, would be difficult, if not impossible, because by throwing or changing the burden of proof upon the party proceeded against, it would in effect and in fact put an additional burden upon him not imposed by the treaty.

Now apply it in another sense. A fishing vessel may enter for the purposes specified in the treaty. Suppose a vessel to come in here in need of water, wood or shelter. She has fishing gear on board but she enters lawfully under circumstances which, under the treaty, would justify her entering. She is seized and by reason of the change made by the Canadian statute the very presence of the implements necessary for the prosecution of the voyage she was on, bait, trawls and other fishing gear would be made evidence to show her guilt. Now that, I submit, shows that this statute entirely changes the position of American fishing vessels under the terms of the treaty and it is therefore for that reason invalid. I only supposed the case of a statute disqualifying the parties on board the vessel and requiring disinterested witnesses, to show that they need only go a step farther in order to entirely destroy the privileges given by that treaty. A vessel arrives from the bank and perhaps there was no vessel within fifty miles of her and no

yesterday, evidences of given.

to be on the intention or at least four specified, and I submit passes an act throw. American vessels in entries here even for extent the privilege say that is a power to the legislature of nations of Canada but of any treaty. The Canada could not without permission of a treaty it seems to destroy it.

referred to. I am Lord Salisbury in a correspondence, in Newfoundland legislature says: "On the other what is, indeed, self matters, is limited in Washington which can slation."

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witness that could testify to the circumstances that drove her in here, and yet if a statute of that kind was passed, she would have no escape in the world from forfeiture and condemnation. So I think it is obvious that it does change the position of the American vessels under the treaty.

Now take it as it stood prior to the passage of the act; I submit that there could not be a forfeiture of the vessel unless the Crown had proved facts and circumstances sufficient to show her guilt. Now that was the position under the treaty.

The COURT. Does not the treaty make every entry of the American fishing vessels into a British port illegal, *ipso facto*, except for the four specified purposes, is not the mere entry into the waters an illegal act? The treaty says expressly and the American people say we agree that our vessels shall not have a legal right to enter your ports, that they shall be trespassers, that an entry by them into the harbor shall be illegal except for the four specified reasons.

Mr. MEAGHER. For the four purposes named she may legally enter. Now there is a general presumption of law that a party is innocent of any offence of which he is charged until the contrary is shown and it is only where it is expressly changed by statute, such as the customs law and other statutes, that it lies upon the other party. Now the period between the time the treaty was completed and 1836, so far as Nova Scotia was concerned and so far as the Imperial legislature was concerned, there was no provision in any statute which put the burden of proving innocence upon the party proceeded against or of the vessel seized. And if no prosecution had taken place in Nova Scotia prior to the passage of that act of 1836, I submit that I am right in contending that, notwithstanding the provision of the treaty and the Imperial act, it would have been incumbent on the Crown to have established the guilt of the party beyond a reasonable doubt. If that is conceded, assuming that this act has the effect contended for, does it not put the vessels of the United States in a different position and under greater burdens, as respects the treaty than existed during that time?

Now with respect to the historical part of it that my learned friend referred to yesterday I am not going to say very much about it. I do not think the opinion of Mr. Sabine or Professor Pomeroy, the one, merely a report, and the other a sort of half literary and half legal article written for a magazine, is going to weigh much in this connection. But I wanted to show your lordship that they are not in many instances correct, to say the least. It is unfortunate that I have not been able to get at the records of the court in the various cases, but with reference to the *Charles*, which was one Mr. Sabine refers to, Mr. B. R. Thompson in addressing the Fishery Commission [page 816] says that the *Charles* was actually seized in the very act of fishing. That is one of the cases the learned counsel cited yesterday as having been condemned for the purchase of bait. Two others were the *Mary* and the *Papineau*, and I have the papers relating to them. They were seized in 1840 and the two are in one affidavit. Here is an affidavit of the somewhat famous Mr. Darby, who says he went on board of her at Ellenwood harbor, Tuskent island, and found green cod fish on board and recently salted that appeared to be caught that day. One of the crew informed the deponent that a vessel had been fishing five miles south of Garret rock, which would be two miles within the line of the coast and cleaned the fish in the harbor where they were lying. There was no contest and she was condemned. The *Papineau* is in the same affidavit and exactly the same expression is used. He said he was informed by one of the crew

that she had been employed in fishing that day and had cleaned what few fish they had caught in the harbor, and the affidavit goes on to show that both vessels were together. Now here are three of the cases that have been cited as showing that it was a condemnation merely for the purchase of bait, when, as a matter of fact, they were all for actual fishing.

I have in my hand a portion of a blue book published in England, giving the return in full of vessels seized among which are the *Mary* and *Papineau*. The return purports to be under the return of the register Scott Tremaine. It is "A return of American vessels seized and prosecuted in this court [court of vice-admiralty at Halifax] for fishing or preparing to fish within British waters from 1817 to 1821 and also a return of the number of American vessels seized for violation of the convention made between the Governments of Great Britain and the United States of America in the year 1818 and prosecuted in this court and the dates of their seizure, condemnation or restoration." Referring to the *Magnolia* and *Hart*, if I understand the return aright, the charge was for fishing at Tusket harbor. Then we come down to the *Papineau* and *Mary*, and the charge is that they were seized at Ellenwood harbor, Tusket island, for fishing abreast of Friar head within a line drawn from Marguerite island to Cheticamp point. I don't think in any of these there is a report of one having been condemned merely for the purchase of bait.

It seems to me if there had been any such decision at the time of the case of the *J. H. Nickerson* it would have been produced at that time. The learned judge of this court, as your lordship well knows, was a most pains-taking man in making up his judgments. In matters historical he spared no pains and no labor to gather any facts that would help arrive at a proper conclusion of the case in hand. I have no doubt if there had been any decisions in the admiralty court that would have aided him or have been a precedent for him in determining that case the counsel for the Government would have produced them and none were produced.

Your lordship will remember that yesterday the learned counsel referred to a number of cases of vessels that were seized way back in 1817, I think it was, and he informed your lordship that the vessels were restored, if I understood him aright, because the statute of 1783 had been abrogated and for want of an act prohibiting their entering, there was no law under which they could be condemned.

Mr. GRAHAM. I see the evidence in these papers you have referred to of the *Papineau* and *Mary* shows the purchase of herring for bait.

Mr. MEAGHER. I read it to show that there was evidence of fishing equally with the catching of bait. The learned counsel stated that they were condemned for purchasing bait and all that was incumbent on me to do was to show that in the evidence that came before the court and the information upon which the proceedings were based leading to her arrest, shows that he had been actually fishing within the limit.

The COURT. Then unless the judgment of the court shows the foundation it is impossible to say on which ground the condemnation took place.

Mr. MEAGHER. I suppose it is open to him to say that it was on the purchase of bait and it is equally open to me to say that it was on the charge of fishing that she was condemned.

Now with reference to the documents that my learned friend read from of Sir Alexander Cockburn and the gentleman associated with him, I do not think it is worth while to take up your lordship's time in

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dealing with that because, at best, they are only fragmentary and in no sense authoritative. The case of the *Charles* that I have cited shows that such statements can not, in the nature of things, be entirely relied upon taken at second hand. The *Charles* was condemned for fishing but she was afterwards restored because the mid-shipman who was put in charge of her to take her to St. John, on the way made use of her to capture another one and for that reason the British government restored her. I sent to New Brunswick to get the records but unfortunately I believe the late fire practically destroyed them; at least that is what I am informed and I have not been able to get them.

Now with regard to the seizures so far as they were reported and brought before the Halifax commission I will refer your lordship to page 1472 and 1473, which is a return of all vessels seized and libeled in the vice-admiralty court of Halifax from 1838 to 1851.

Adjourned.

SATURDAY AFTERNOON.

Mr. MEAGHER resumed.

I was dealing, when court adjourned, with the cases that have been cited by the learned counsel on the question of condemnation for the purchase of bait. The only other case I didn't refer to is the case of the *J. H. Nickerson* which, I suppose, it will be as well to refer to now. I had an impression that his lordship in that stated something to this effect that the question came before the court for adjudication for the first time. I know there were no precedents produced. Your lordship will see from the judgment that a very long time elapsed between the time of the argument and the time of the judgment. I do not think it is disrespectful to say that many of the arguments urged upon him may have escaped his attention when he came to prepare the judgment. He certainly does not deal with this question whether or not there was a statute rendering a vessel liable to forfeiture for anything less than actual fishing. That point he does not deal with at all.

The COURT. Except generally in the last few lines of the judgment.

Mr. MEAGHER. Yes, and without reasoning it out. He simply says there are the words of the statute and the inevitable conclusion from them is so and so—without attempting to discuss any other provisions of the statute. I notice that S. R. Thompson in his argument before the commission at Halifax, which will be found on page 1579, interrupted Mr. Foster and made use of these observations. In the case of the *White Fawn*, tried by Judge Hazen, the vessel was libeled for fishing in our waters. As matter of fact she was not libeled at all. I am only mentioning that to show his contention later on. Yet the framer of the libel had been pleased to frame it, not for buying bait but for buying bait with the intention to fish in prohibited waters and he failed to prove the latter allegation. That is the ground on which the learned counsel attempted to distinguish that case. The case was brought before the court on affidavits made by Captain Bates in which these facts were stated: [Reads from the case of the *White Fawn*.]

Now it appears to me that decision stands in very marked contrast with the case of the *J. H. Nickerson*. In the one case be the judge right or wrong he has reasoned it out; in the other the late chief justice has said "there are the words of the statute, the inevitable conclusion is that she violated it" and made no attempt whatever at reasoning. In the case of the *White Fawn* one part of the judgment is, I submit,

that for the mere purchase of bait the vessel would not be liable to forfeiture.

I have in my hand an opinion given by J. D. Harding, Fred Theasiger and Fitzroy Kelly, law officers of the Crown, and given in 1852 to the Earl of Malmesbury, which can be found in the Nova Scotia Journals of 1853, appendix 4 page 140. [Reads.]

While dealing with that subject I will say that I have been furnished with a memorandum which I shall read as a part of my argument. "With regard to the assumption in the case of the *J. H. Nickerson* as to the expression 'preparing to fish' in the act of George III., that the words 'within such distance of such coast, bays,' etc., refer to the word 'preparing,' and not to the word 'fish,' this seems to be inharmonious with the grammatical order of the sentence. Moreover, in that part of the second section of that act which is prohibitory, the words are, 'to fish for, take, dry, or cure any fish within three marine miles, etc.,' the part in which the words 'preparing to fish' are found is not the prohibitory part of the section, but only the part establishing the forfeiture. The prohibitory part is clearly limited to fishing within the three marine miles; and the part establishing the forfeiture is not to be supposed to extend the nature of the offense unless clear words are used for that purpose.

The act of A. D. 1868, sec. 3, so far as 'preparing to fish' is concerned, seems to be a mere re-enactment of the act of George III.

Both of these statutes with reference to 'preparing to fish' are of universal application to all foreign fishermen, and are not limited to fishermen of the United States; that such was the intention, notwithstanding the recitals at the beginning of the statute of George III., is made plain by the proviso at the end of the second section.

Therefore if the rule laid down in the case of the *Nickerson* is right, the effect of the statute of George III., and of the similar provision of the act of A. D. 1868, is to render liable to forfeiture any vessel of any foreign nation, which has not by treaty the right to fish within the limits described in those acts, but which, while proceeding on its voyage to the Western banks or other banks where it is clearly entitled to fish, passes within three marine miles of the open coasts of the Dominion of Canada but on the open sea, for doing any act under those circumstances which could be called 'preparing to fish,' although the fishing was intended to be done on the Western banks, or in other unprohibited waters."

If your lordship will look at the statute you will find in some sections the words "coasts, bays, creeks and harbors" and in another place only "bays and harbors" are used. Now I take it for granted that there could be no objection in the world to a vessel doing this: A vessel fits out at Eastport for the Western banks which is outside the prohibited waters. Eastport is her place of departure and she has no intention and no object in fishing elsewhere. With her fishing gear on board, I submit, that notwithstanding the treaty or the act she would have a perfect right to sail within a mile of Cape Negro through the waters. That while going through that water on her voyage to the Western bank she got her bait tubs ready or iced it, got her trawls ready or took any other steps looking to an immediate preparation for fishing—if the contention of the learned counsel is going to prevail she would be liable to forfeiture. That, surely, would be a most extreme interpretation to put upon the act. Here is a vessel doing that which I say she may lawfully do, she is not prohibited, she is not restricted from passing through water at that place. I am taking a place that is neither a bay

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nor a harbor. I am taking a place where the vessel has an undoubted right to be and where my learned friend would not contend that she had no right.

The COURT. She is in prohibited waters.

Mr. MEAGHER. I submit that "entering" does not mean sailing through but it does mean the ordinary entering or going in; it does not imply a mere passing through the waters. If you give it the construction the learned counsel says it should have you would subject to forfeiture a vessel that was only doing that which she has a perfect right to do.

The COURT. Suppose she went along from Cape Sable to Cape North within a mile and a half of the shore and during all that time had her lines and hooks hanging from the gunwale, the bait on deck and was ready at a moment's notice to fish. Suppose she is a mackerel vessel with a seine tied in the boat behind her and ready to throw it. Then the question comes up is that a preparation to fish under the words of the act.

Mr. MEAGHER. I admit that with such an advanced stage of preparation as that, it might be fairly inferred that the preparation was to fish within the three mile limit. But I am putting a case where no such inference can be drawn, where the vessel is actually bound and actually intends to fish on the Western banks.

The COURT. Given that as proved, then you come back to the question we are now discussing, whether it is legal or not under the statute to prepare in the prohibited waters to fish beyond.

Mr. MEAGHER. I am putting that illustration for the purpose of calling your lordship's attention to two distinct aspects of the case. In the one case they are not prohibited at all from passing through the three mile limit—

The COURT. I quite agree with you.

Mr. MEAGHER. But they are prohibited from entering the bays and harbors. Now I am making an illustration by means of a vessel fitted out at Eastport and admitted to be bound for, and intending to fish no where but on the Western banks and she passes—it might be inadvertently or from necessity by being driven on the coast—through waters within the three mile limit where she has a perfect right to pass to pursue her voyage. She is not restricted from coming within a mile of the coast, passing through the water within a mile of the shore on her voyage.

I submit, that the test which I apply is a good one and shows that it never was intended by the words "preparing to fish" to mean a mere preparation within the three miles to fish anywhere, because surely, they never had in contemplation a forfeiture of the vessel under the circumstances I put. But if the statute is interpreted in the way the learned counsel says it shall be the vessel would be subject to forfeiture, although doing a perfectly innocent act and being in a place where there was no objection to her being. There is nothing in the treaty to prevent her being within one hundred yards of the shore, provided she is not hovering there.

Now, look at the act itself. In the second section the act professes to carry into execution so much of the convention as is above recited. "If any foreign ship, vessel or boat shall be found fishing or to have been fishing or preparing to fish within such distance of such coast." Now if the words "found fishing" refer to the place within such distance the words "have been fishing" must refer to within such distance because the offence only consists of fishing within that distance. Now,

how is it possible that two members of that sentence can be taken to apply to different places. How can one be taken as applicable to fishing within that distance and the other as applying to some other place. I submit, that the words "shall be found fishing" govern the whole sentence. "Shall be found fishing" and "have been found fishing" must mean fishing within the prohibited limits. Now how can "preparing to fish" in the same sentence mean preparing to fish at some other place?

The COURT. Preparing to fish where fishing would be illegal?

Mr. MEAGHER. Precisely. I say you cannot separate it. It must inevitably result in bringing other words into that section before that interpretation could be put upon it and it would read something like this: "If any such ship, vessel or boat shall be found fishing within such distance or to have been fishing within such distance, or preparing within such distance to fish anywhere." That is the addition that would have to be made to that section before that interpretation contended for could be given to it.

Now, as I said before, it never could have been intended, that inasmuch as they didn't restrict and didn't prohibit vessels from sailing within the three mile limit, it cannot surely be successfully contended, notwithstanding the absence of any words adopted for the purpose, that the intention was to interfere and restrict the rights of vessels passing through the three mile limit although there was no restriction put upon their sailing through. They have a perfect right and perfect liberty to sail through in going to some other place, but if they happen to do an act which could be construed into a preparing to fish they are forfeited.

The COURT. That is important if that be so. I want to understand your argument. Mr. Graham contends that under the treaty alone a fishing schooner could not enter a port except for the four specified purposes. Now a vessel having entered in violation of the treaty, that is without entry, goes on and makes preparation to fish. Is that or not an act in contravention of the spirit of the treaty itself? I admit on the mere fact of buying bait your ground would be very strong; if we were only to discuss the question whether buying bait was a violation of the statute, simply buying bait, irrespective of the other evidence which you must take into consideration—whether the act of buying bait is to be held as matter of law, evidence of a preparation to fish.

Mr. MEAGHER. If your lordship puts that in connection with the argument I was attempting to make, your proposition involves an entry into a port or harbor and the case I put does not involve that at all. The prohibition in the act or the treaty with reference to the right to enter would not apply to the case of the vessel that I put, at all. It seems to me no country would, in its senses, think of saying that a vessel should not sail within three miles of its coast. Now to give the treaty and the statute the interpretation contended for would result in a vessel, situated as I stated, being forfeited.

The COURT. As I understand Mr. Graham he does not go any further than the port in which she is found. If she comes into Halifax or into Digby without the excuse of one of the four exceptions in the treaty, she comes in illegally and being in port without a legal excuse she prepares to fish. He says irrespective of where she intends to fish, under a fair construction of the treaty and statute it is a violation of the statute. Of course, you say that it is not. But the mere fact of whether she has a right to go through the prohibited three mile limit as the public high way of nations is not involved here at all.

Mr. MEAGHER. No, my lord, only by way of illustration. Now laying aside the cases where vessels enter ports or harbors, the only right that has been renounced on the part of Americans is the right to take, dry or cure fish. They didn't renounce the right of passage through—

The COURT. I didn't say by any means that they did, but it doesn't touch the argument. The use of the waters as a public high way is not a question that strikes me is involved in this contention at all.

Mr. MEAGHER. No, my lord, but I am arguing that it would follow the learned counsel's contention; if carried out to its legitimate conclusion the result would be that a vessel pursuing an innocent voyage where she had a right to sail might be forfeited while exercising what was no more than her right. I think that contention goes to show—

The COURT. That the treaty is a severe one.

Mr. MEAGHER. No, my lord, but that it never could have been intended on the part of the American people to abandon that right to sail through the prohibited waters.

The COURT. I am going to assume they never did abandon it.

Mr. MEAGHER. I ask that the use of the words "ports and harbors" and "creeks, coasts, bays and harbors" used in the different sections shall not be lost sight of. In one she is prohibited from entering except for the four specified reasons and the only thing outside of the ports and harbors that was renounced is renounced in the second section, and that is the right "to take, dry or cure fish."

Now my argument was simply this; that to put such an interpretation as that upon it would lead to such an extreme conclusion that it must be assumed that such an intention was never within the contemplation of the parties. It never could have been contemplated that a vessel having the right to sail through a particular place, never having renounced the right to sail through, that while sailing through, because she made some trifling preparation to fish at the end of her voyage she could be forfeited. The effect would be that no fishing vessel could safely navigate within three miles of the coast of Nova Scotia. Coupling it with the section that puts the burden of proof upon her, to deprive her of giving evidence of what her intention was, what would be the result? No vessel passing through within three miles of the coast of Nova Scotia, although not in a port or harbor, not one vessel could escape condemnation.

The act of George III., relied on by the Crown, especially in its second and seventh sections, seems to cover the whole subject-matter of the treaty, by in part providing a direct prohibition and forfeiture, and by in part providing that the regulations under the treaty shall be made by the Crown by and with the advice of the privy council, or by the governors named, who are always imperial officers. This would seem by direct implication to exclude any other method of regulation under the treaty, or appertaining to the treaty, except by the consent of the parliament of Great Britain and Ireland, and to necessarily exclude and shut out the action of the Dominion Parliament as to anything touching the subject-matter of the treaty, notwithstanding the general and proper clause conferring upon the Dominion Parliament jurisdiction to legislate about coast and inland fisheries.

Now let us deal with the question of the purchase of bait. I think I have sufficiently called your lordship's attention to the section of the act relied on and my contention is this; that other and different words would have to be added to the section before it could be construed into a preparation within the three mile limit to fish without, and under the case of the *White Falcon* I say it is incumbent on the Crown to show that

the preparation was made with the intention of fishing within that limit; otherwise it does not come within a fair and reasonable construction of that section.

The COURT. You say the preparing to fish must be to fish within the three mile limit. You say first the presence of the vessel within the limit and while there a preparing to fish within that limit.

Mr. MEAGHER. Yes, my lord.

The COURT. Would you say this preparation by the vessel outside the limit to fish within the limit would not be an offense?

Mr. MEAGHER. I should say that probably it could be argued that it was an offense.

The COURT. A great deal turns on the meaning of these words "preparing to fish in British waters." I think more apt words might be used. What is the meaning of these words? Does "in the waters" refer to the fishing or to the preparation? If it refers to the fishing then a preparation outside to fish within the limits would not be narrowed by the words "British waters."

Mr. MEAGHER. I do not suppose it would.

The COURT. Then you admit it would be an offense against the act? I don't say it is, I am only calling your attention to it. I am only dealing with that branch of the sentence "preparing to fish within British waters." Here is an offense described by the three words "preparing to fish." There are two elements to that, one an active element and the other a descriptive element. The preparation is the active element and "to fish" is what they are preparing to do, and now which of the two do the words "British waters" apply to.

Mr. MEAGHER. It seems to me that when you look at the act itself and at the words "shall be found fishing," which is the governing part of the whole sentence, which is carried all through "shall be found fishing within such distance" or "shall have been found fishing within such distance" and "shall have been found preparing to fish within such distance"—surely that only means a preparation within that distance to fish within that distance and not to a preparation within the distance to fish anywhere.

Now, I say supposing the entry of the *Adams* into the port or basin of Annapolis for the purpose of purchasing bait to have been in breach of the treaty, there is no statute which renders her liable to forfeiture. She may be warned off and the master may be liable to a penalty for violation of the act. I submit, that if any authority or further argument is needed on that point that the fact of the act of the last session having been passed, is a legislative declaration that the law previous to that did not warrant a forfeiture merely for an entry other than those mentioned in the statute.

Now I submit still further that the purchase of bait is not a preparation to fish such as was in contemplation within the meaning of the treaty. I submit that the words "preparing to fish" means the immediate preparations and not so remote a step as the mere purchase of bait; otherwise, it seems to me, a man beginning to construct a vessel, an American coming to Nova Scotia and undertaking to build a vessel here for the purpose of fishing would be guilty of the violation of the act the moment he began the construction. I submit that the words "preparing to fish" meant the immediate steps (I am speaking of the treaty) such as getting lines ready, getting nets into boats or dories to be set and not one of the early stages of preparation to fish such as the mere purchase of bait and putting it on ice, which was done in this case and which, in this case, I submit shows an intent not to use it immedi-

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ately but at some remote time which might extend over a period of three weeks. It was proved by one of the witnesses that bait put upon ice would keep about three weeks. I submit, that what was meant, was such a preparation as would establish an irresistible inference that the intention was to fish in the immediate vicinity of the vessel, within the three mile limit.

With respect to the burden of proof raised under section 10, it seems to me, your lordship would not try a question of this kind in this suit, as to whether the officer or the party who seized her was a person authorized to do so. The moment she was seized and libeled your lordship could not be asked to go behind that and try whether the party seizing her was authorized to do so. It seems to me that is a question your lordship cannot try, because once she was libeled, the only question tryable would be whether or not she committed the offense. Therefore that is another element going to show that that provision was intended for some specific purpose and not having relation to the main question. Suppose a case came before your lordship and the offense properly proved and the action properly brought, could your lordship go back and try the question whether the party who seized her was properly authorized to seize her, notwithstanding the fact that the guilt of the vessel was established? Would your lordship dismiss the case because the man who seized her was not properly authorized? I do feel that there is a good deal of force in that point to show that it was not intended to throw the burden of proof in the whole case upon the claimant but was for some special purpose, some interlocutory proceeding.

Now I want to call your lordship's attention again to the words in the act: "Provided, however, that the American fishermen shall be allowed to enter such bays and harbors for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water and for no other purpose whatever." Now "repairing damages therein." What damages are intended to be repaired? Not merely damage to the hull but repairing any damages that the vessel or her equipments, or materials used in connection with the fishing voyage, might require to be repaired. I contend that it is immaterial whether it be a broken spar, a split sail or fishing gear.

The COURT. If a vessel loses her seine or loses her salt she can leave her fishing ground and come in here and supply those articles?

Mr. MEAGHER. Yes, and I say that applies to bait. There is nothing to limit it at all to the hull of the vessel or to the mere equipments of the vessel but it is general. As a vessel she could go back and pursue her voyage but as a fishing vessel with trawls broken or bait gone she could do nothing.

The COURT. Don't you think that is inconsistent with the manifest intent of the treaty as recognized by both parties and the provision as to the four special purposes for which she may enter?

Mr. MEAGHER. No, my lord, it seems to me this comes under one of the four special purposes. If she split one of her sails or lost her topmast she could come in and replace it.

The COURT. Do you think under these words a fishing vessel could come in and buy beef and pork and flour to fit out with?

Mr. MEAGHER. Yes, my lord, if the articles she had taken became from the lapse of time unfit for use.

The COURT. I cannot assent to that view just now.

Mr. MEAGHER. I contend that if any part of the vessel is damaged or if she is damaged in anything that is necessary for the prosecution

of her voyage she has a right to come in and repair it; the words of the treaty are not confined to the vessel. If the words of the treaty were to be construed literally, as the learned counsel contends, a vessel could come in and repair damages if she had the material on board to repair the damages with. She might buy wood and obtain water but if she wanted iron, rope or oakum to repair damages she could not buy it.

The COURT. I think she would have a right to obtain those articles to repair damages.

Mr. MEAGHER. The contention I make is not carrying it one whit further than your lordship's contention. Your lordship's view is that if she wanted oakum, rope and iron for the purpose of repairing damages she could buy it. Now is it going any further than that to say that she may come in not merely to repair damages to the vessel but may also come in to repair damages to the outfit or material she uses in connection with the voyage itself. I say the one interpretation is no stronger and no larger than the other.

Suppose a vessel pursuing a fishing voyage has her main or foretop mast carried away. Although it is not necessary for the further prosecution of her voyage she can come in and repair it, but if her salt for salting the fish has become wet and damaged she cannot come in and replace it although it is a necessity to the completion of the voyage. She can come in and get that without which she could get along very well but she cannot come in and get that which is necessary for the further prosecution of the voyage. It seems to me that it is carrying it to a very extreme length if you hold that repairing damages meant repairing damages generally.

As to the *Adams* procuring ice I think there is not much difference between ice and water. It is only water in another shape; if melted it comes back to water again. It seems to me it is no more than if she came in and got a few casks of water. However, it stands in no different position from what the bait does.

Now in respect to the treaty itself, I wish to call your lordship's attention to the fact that the treaty was made at a time when commercial intercourse between the two countries by the medium of fishing vessels and the respective vessels of the two countries was practically prohibited. And in framing the treaty there is no doubt whatever, or I submit it is pretty evident, that the British authorities were anxious not to do anything which would extend commercial non-intercourse then existing. At that time I think the navigation laws stood in such a position that the vessels of one country could not import or export from or to the other country. With reference to the state of the navigation laws I will ask your lordship's attention to Holt on Shipping, pages 75 to 87, where the state of the law at that time is given very fully and concisely.

Now I say in framing the treaty the object was to prevent this non-intercourse from being broken in upon and therefore it was that these provisions were put in the treaty and subsequently in the act of Parliament. In other words, they were careful not to give in the matter of navigation or carrying cargoes back and forth any privilege by this treaty. But the treaty did not take away any right that then existed as respects navigation, or, if it did, I submit that the subsequent legislation which followed in the interval between 1818 and the time of that proclamation and the orders in council, modified that to such an extent as to enable fishing vessels to come in and purchase bait.

In connection with that, I submit that American vessels under circumstances such as are disclosed in the case of the *Adams*, had a right

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under international law to come in and get those supplies providing they were not permitted to do so under the terms of the treaty, which of course I do not admit. On that point I wish to call your lordship's attention to the authorities and to the argument that was made by Mr. Dana before the Commission, at pages 1582 and 1583 of the proceedings of the Halifax Commission and the authorities there cited.

I say this was an enactment in the light of the existing international law and it cannot be supposed that it was the intention of the parties to give up any rights that they had under the international law. I contend that it was a case of distress in this sense, that she went elsewhere to get bait and failing to get it she could not continue her voyage successfully without it, and I contend that in that case it is a case of necessity and distress for her to come in here and get bait.

Now my learned friend's contention would amount to this: If she is confined to the four purposes of entering, namely, to repair damages, shelter and the purchase of wood and procuring of water, then she could come in and repair a sail that was split or a topmast that was lost but if she was actually in need of provisions or anything else that was necessary for the subsistence of the crew, she could not come in and procure it without a violation of the treaty unless it is to be construed in the light of existing international law which would give them the right to come in. Suppose an American fishing vessel having accommodation for only ten men on board, fell in with a British barque containing fifteen or twenty men which was sinking, whom they rescued, and she brought them in to a British port to land them; if the terms of the treaty are to stand literally, as contended for by my learned friend, and are not to be construed in the light of international law, she would be liable to forfeiture because landing a distressed crew is neither repairing damages, purchasing wood, obtaining water or for the purpose of shelter. So I think that is an argument going to show that that provision must have been made in the light of international law and comity between the countries, which, I submit, gives the right to American vessels to come in here for such purposes as the purchase of bait.

Moreover, I cannot conceive any injury to the fisheries that would arise from permitting them to get bait. It is very well known that the shore of Nova Scotia produces very much more bait than is consumed here and therefore it could not be said to interfere in any manner with the supply of our own fishermen or detract from the income of our fishermen any more than the coming in of the American vessels and getting their supply of wood and water.

Now if it be contended that the statute goes any further than the treaty I would like to call your lordship's attention to Dr. Lushington's reports, page 306, where he says, in substance, that in case of doubt the presumption would be that Parliament intended to legislate without violating any rule of international law and that the construction would be accordingly. Now I ask that the same principle be applied to this treaty; that the intention was not to deprive and was not a renoucement on the part of the Americans of any right that they had to come in here under the rules of international law and international comity and it is altogether unreasonable to suppose that the intention was to prevent American vessels from coming in here for the purpose of obtaining assistance and relief.

I will ask your lordship to take a note of the following citations: Forsyth on Constitutional Law, page 400, and the authorities there cited; Blackstone's Commentaries, book 4, page 67; Kent's Commentaries, vol.

1, page 33 to 35; the Case of the *Fortuna*, 5 Robinson's Admiralty Reports, page 27; *Francis and Eliza*, 8 Wheaton, page 398.

This last case arose under an act of Congress of 1818 which provided for the closing of United States ports owned wholly or in part by the subjects of His Britannic Majesty coming or arriving from any port that is by the ordinary laws of navigation and trade closed against vessels owned by citizens of the United States. It provided for confiscation. The *Frances and Eliza* were bound from Margaritta to New Orleans and hove to off Falmouth in the island of Jamaica while the master went on shore to get provisions but the vessel did not enter the harbor. It was held that under the circumstances that she was not liable to confiscation although she had touched at an intermediate British closed port from necessity. The court held that as it was done not under exactly absolute stress, the circumstances somewhat approached to it and she did not violate the statute.

In this case I claim there was such a necessity, apart from the treaty and the statute and especially so in the light of the reciprocal legislation as entitled this vessel to come in and make the purchase which she did.

As your lordship has observed, the language of the convention is, indeed, very peculiar. It renounces any liberty for United States fishing vessels to take, dry, or cure fish within three marine miles as therein specified. Then comes the proviso which was undoubtedly intended to guarantee a privilege to United States fishermen, subject to the qualifications imposed upon that privilege. In other words the proviso as a whole was for the benefit of the United States fishermen. If it is said they were deprived by it of the right recognized by all Christian nations, to enter for supplies, they were deprived of a right which they would have enjoyed except for the proviso, and an intended privilege is converted into a restriction. This certainly was not its spirit, and a careful examination of its language we think shows that this was not its letter. Its language is not, that they may enter bays or "ports" for the purposes therein named, but that they may enter bays or "harbors." This is a generic term, and was intended to secure all United States fishermen the right of entering, for the specified purposes, bays and harbors generally, without reference to the fact whether or not such harbors or bays were established or recognized as proper commercial ports.

The right to enter commercial ports was not under consideration in this paragraph, but only the right to enter bays and harbors indiscriminately. No provision was made with reference to ports as ports, but the broader right was secured for United States fishermen to enter bays and harbors, whether ports or not; and this broad right is all which is limited or restricted by the closing words of the paragraph of the convention in question.

Adjourned.

MONDAY MORNING, June 6.

Mr. MEAGHER. When the court adjourned on Saturday, if your lordship pleases, I was referring to the first article of the treaty. I have stated before, my lord, that the words "for no other purpose whatever" were not intended to exclude the right to enter for the purchase of bait; that the primary object of the treaty was to prevent the taking, drying, and curing fish within the limit.

Now, in that connection, and for the purpose of assisting the interpretation I think your lordship would have the right to look at the

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previous treaty, and I call your lordship's attention to article 3 of the treaty of 1783.

Your lordship will see the care that is evidently taken in that to prevent any drying or curing fish on the shore except in places where it was not settled. Now, there the freest liberty was given to take them, but they were not given liberty to dry and cure them. All I say in reference to that is that your lordship in construing this treaty should do it in the same manner that you would a new act of Parliament which had been substituted for or had repealed a prior act; that is, it should be read in the light of the provisions of the prior statute. So this treaty should be read in the light of the prior treaty of 1783.

Now, in the same connection the treaty of 1818 having been made solely in regard to the fishery question, the words "for no other purpose whatever" should be interpreted in this way: "For no purpose inconsistent with the primary object," that is the taking, drying, or curing. And your lordship will see that by the treaty of 1783 the curing of fish on land was one of the principal objects that the promoters of the treaty seemed anxious to prevent. In support of my contention that that was the primary object of the treaty, I wish to refer your lordship to the proviso at the end of article I. I say that the wording of the additional clause after the proviso goes to support my theory that really the principal object of the treaty was the prevention of the taking, drying, and curing of the fish. The learned counsel seems to lay great stress on the words that follow "or in any other manner whatever abusing the privileges hereby reserved to them;" but your lordship will see that there were other privileges given to them by the treaty, and I contend that the words "abusing the privileges hereby reserved to them" does not refer to the harbors, where they were not allowed to fish at all, but have reference to the privileges given them on the shores of Newfoundland and on the coast of Labrador.

I think that theory is also borne out by the course the imperial legislature took in the act to give effect to the treaty. I think that corroborates my view. Your lordship will see that they provided for forfeiture only in the case of fishing according to the words of the treaty; and in case of refusal to depart or in case of wrongful or improper entry, the legislature only provided for such an offense a penalty against the captain. And again your lordship will see that a vessel having entered, the restrictions to which they are to be made subject, according to my reading of it, are not to prevent the purchase of bait but to prevent that which was the primary object of the treaty, namely, the taking, drying, and curing.

Now I am not going into the historical part of the question at all. I dare say both countries have taken inconsistent positions at times on the question, but I say that no inference can be drawn in favor of the Crown from the practice that has resulted, because I have shown your lordship conclusively that, except in the case of the *J. H. Nickerson*, there has not been a single case of condemnation merely for the purchase of bait alone. If I were to refer to that branch of it I should refer your lordship to the circular which will be found on the next page of the Nova Scotia journals, to the opinion of Thesiger and Kelly. But I do not think the mere practice one way or the other can be invoked to aid the interpretation of the treaty.

Now the learned counsel urged that the legislature in passing the act must have had the question of the privilege of buying bait and supplies before their eyes. I submit if they had, they took an exceedingly awkward and clumsy way of preventing such an act as that. I contend

that if that was their intention they certainly would have been careful to have expressed it in such a way as to leave little, if any, room for doubt about it; whereas now I think it is open to a great deal of doubt. At the same time they would have the principles of international law before their eyes to which I referred your lordship on Saturday. If the treaty is to be taken literally and is not to be read in the light of international law the result would be that they could not come in at all no matter how urgent or serious the distress. I also contend that the *Adams* in coming in to purchase bait was simply refitting or repairing damages.

Now I will ask your lordship to take these citations: Vattel, book 1, chap. 23, section 288; book 2, chap. 9, sections 119 and 120. I was not able to find the books in our law library.

I wish also to refer your lordship to the *Gertrude*, 3 Story, 68. I have not seen these authorities, but they were furnished me as authorities going to show that the *Adams* was justified in entering and purchasing bait.

The citations from Blackstone on Saturday and those immediately succeeding were on this point that international law was a part of the common law, and I wish to add to that that the authorities are that no statute can alter the law of nations. 2 Dodson, 210; 4 Burroughs, 2016.

Now, upon looking at the pleadings your lordship will find the allegation is that the *Adams* was a fishing vessel having a license which we must take was a general license. Now I am instructed that the only reason why a distinction is made in the United States statute between licenses in the different classes of fishing was to prevent frauds on the Government through the bounty system. For years the United States had in force a system of laws giving bounties to vessels that fitted out expressly for a particular fishery and of course they had to devise laws for the purpose of preventing a vessel that fitted out really for mackerel but afterwards catching codfish, from coming in and getting any part of the bounty; that is, they wished to reserve it exclusively for those that fitted out for it. Beyond that I do not understand there is any difference or distinction between the various licenses that are issued to the different classes of fishing vessels. Section 4304 of the laws of the United States obliges vessels licensed for fishing intending to touch and trade at any foreign port to obtain from the collector a permit to touch and trade. Section 2497 I do not think is material because it was simply intended to be used as a measure of retaliation against the vessels of other countries where similar restrictions were enforced.

I now call your lordship's attention to the proclamation by the President of the United States, fifth of October 1830, and the order in council of the fifth of November 1830 on the part of Great Britain which were put in evidence.

In that connection I ask your lordship to take a note of the last English statute on the subject. The first English statute on the subject is chap. 18 of the twelfth year of Charles II and will be found in the statutes of that period for the year 1660 at page 166. But the last act on the subject is the 12 and 13 Victoria chap. 29. Now I am not going to deal with those further than to call your lordship's attention to the point that at the time the treaty was passed non-intercourse by medium of the vessels of each country between the other was prohibited. There were very protracted negotiations between the two countries which resulted in the passing of what is called the reciprocal legislation, and my con-

tention is that that reciprocal legislation is not special at all but is general. It says "all vessels."

The COURT. The vessels of the United States that formerly had been excluded from our ports may enter to do what? To export the productions of this country and import the productions of their country?

Mr. MEAGHER. If your lordship will take my point, what I submit is this: Assuming that the treaty went as far as my learned friend contended it did, that this subsequent legislation brought into effect by virtue of the proclamation of the President on the one side and the order in council on the other made it legal for American fishing vessels to come into our ports for the purpose of getting ordinary supplies. I say there is nothing in that reciprocal legislation which makes any distinction between fishing and trading vessels. It refers to all vessels.

Prior to the passage of the act, sixth of George IV, which is the one under which the order in council was made in 1830, the United States legislation discriminated between fishing and trading vessels but neither the British act nor the order in council makes any distinction between them. It refers to all vessels. If fishing vessels were intended to be excepted from that act it would have been stated. It is true that a general statute ordinarily does not repeal an earlier special act but where there is no reservation, or exception, if the two are inconsistent as matter of course, the latter repeals the earlier statute. Now buying bait is an act of commerce and trading, and therefore I submit would fall within the protection given by the reciprocal legislation.

The COURT. There is no question but that a schooner registered other than a fishing schooner has a right to come in.

Mr. MEAGHER. Suppose she filled both characters?

The COURT. She could not; they licensed her to trade but that does not destroy her character as a fishing vessel.

Mr. MEAGHER. I called your lordship's attention a moment ago to section 4364 which provides for her obtaining from the collector the license to touch and trade.

The COURT. She would be forfeited in their own courts if she didn't obtain it.

Mr. MEAGHER. Does she not thereby acquire the character of a trading vessel?

The COURT. The agreement they made with us was that fishing vessels should not enter except for certain purposes, now can they, by municipal regulation of their own, authorize fishing vessels to trade and thereby practically annul that part of the treaty? Could their fishing vessels come in here and load with corn and potatoes and salt fish and take it away?

Mr. MEAGHER. That is the question we are discussing and I am contending that they can, in the light of that section, if they have a permit to touch and trade.

The COURT. Then I do not see why the two countries should have occupied so much time in dealing with this treaty which would thereby be made absolutely null and void.

Mr. MEAGHER. I say a vessel in one aspect may be a fishing vessel and in another aspect she may lawfully touch and trade and thereby fall within the provisions of this reciprocal legislation.

I have very little more to say. The argument I am making in this will apply to the *Doughty* case. Unless something new comes up I do not intend to say more.

Prior to the adjudication in the case of the *Nickerson* I think I am safe in saying that there had been no case, certainly no contested case,

in which there had been a forfeiture decreed simply for the purchase of bait. Now, if I am right in that the passage of the statute of 1868 containing these words that had been in a previous statute could not be said to have been enacted in the light of previous decisions. I admit the principle that if decisions have been made which give to certain words a particular meaning and effect and the legislature of the same country where the decisions were given subsequently used the same words it would be a very strong circumstance.

The COURT. I do not think Mr. Graham established that proposition satisfactorily, that the subsequent legislation was in the light of this decision.

Mr. MEAGHER. My argument is this, that if there were no such cases then the act of 1868 was not passed in that view and your lordship would not be obliged to give it that interpretation.

Now, with respect to the question of intention, I have dealt with that to some extent before, but it seems to me that evidence of intention is admissible in a great many cases. Take the case of domicile, the purpose or intention with which a man goes to reside in a foreign country. The time he is going to stay there and the intention in going there is admissible. In this case if the burden of proof is upon the vessel to establish her innocence it would be impossible for her to do so if she could not say where she was bound for and to what use they intended to put the bait.

Now, as the argument has taken a somewhat wide range your lordship will pardon me if I restate the points.

(1) My contention is that the acts proved or which were admitted are not a violation, either of the law, or the spirit of the treaty or the acts. The answer admits the purchase of bait but not the purchase of ice; however, that would make no difference because if one is legal the other is and if one was not the other would not be unless ice is to be considered as water.

(2) The buying of bait and ice under the circumstances was not a preparing to fish within the meaning of the treaty or acts and there is no fishing proved.

(3) That it is incumbent on the Crown to show that the acts in question were done within the limit for the purpose of fishing within those limits and that the Crown has not done.

(4) That if the burden of proof was upon us we have sustained it; that if sect. 10 of the act of 1868 has the meaning contended for by the Crown it is invalid; that under the treaty and international law and the reciprocal legislation referred to, the acts of the vessel were lawful. Of course, within that point is contained the view I have already expressed, that if the treaty and act of George III prohibited the acts in question the subsequent reciprocal legislation modified it so as to make the act lawful; that there is no statute or order in council prohibiting the purchase of bait and supplies; at all events none that provides the penalty of forfeiture.

There were some other points incidentally taken but these were the principal ones. I do not think in the case of the *Doughty* there is any claim that fishing was done beyond the mere purchase of bait. Apologizing to your lordship for taking so much time I will submit the case.

ARGUMENT FOR THE CROWN IN REPLY BY R. L. BORDEN, Q. C.

Mr. BORDEN. If your lordship pleases, upon the point that the words "for no other purpose whatever," it seems to me unnecessary to adopt any interpretation other than the interpretation imported by the words themselves. The words are perfectly plain and of obvious signification in themselves, and to interpret them in the way my learned friend has suggested does not seem to me to be allowable.

In the next place, if we should insert the words which my learned friend suggests should be inserted, it does not seem to me that they would have any meaning. He says "for no other purpose inconsistent with the provisions of the treaty." It seems to me his argument upon that point amounts to this, either the additional words would have no meaning at all or would not affect it any in the slightest degree. "For no other purpose whatever inconsistent with the provisions of the treaty," namely, the purpose of entering for the purpose of shelter, repairing damages, purchasing wood, and obtaining water.

I want to make one or two observations in regard to the contention of the learned counsel that the treaty and order in council enabled this vessel to come in and get bait for the purpose of pursuing her fishing voyage. If your lordship pleases, the order in council could not possibly give any such permission to a vessel of that kind for several reasons. In the first place, it would not be an exportation to another country, and that is what the order in council allows. [Reads the order in council.] Now it seems to me an extraordinary stretch of language to say that the purchase of bait in Annapolis Basin, to be used inside or outside the three mile limit, could be termed an exportation of goods from the British possessions to be carried to a foreign country. I do not understand upon what principle these words could be extended so as to cover transactions of that kind. The learned counsel says that it should have been expressly stated in the act of 1825 that fishing vessels were excluded. Now I contend that it is not necessary, in order to exclude them, that they should have been mentioned, but on the contrary, if it was intended to include them they should have been mentioned, and the fact that the class of vessels which had been dealt with in the statute of 1813 was not mentioned is certainly the very best reason in the world to show that they were not intended to be covered by the general expression in the statute of 1825, which, on the very best construction my learned friend could put upon it, might and might not include these vessels. The statute of 1813 having expressly provided for them, and the statute of 1825 not having provided for them, they would be governed by the provisions of the former statute and not by the latter, unless expressly mentioned in it. And, as your lordship has observed from the argument of the learned counsel who opened the case, the provisions of the act of 1825 related to a different class of vessels and different purposes; they related to vessels that exported goods to foreign countries to be used there, and did not relate to supplies for fishing vessels at all, either by express terms or by implication.

As to the burden of proof under the Canadian act, my learned friend says, in the first place, that it does not relate to proceedings in this court at all. Now, section 10 of the act of 1868 follows sections 7, 8, and 9, which provide for proceedings in this court. Section 7 says that any penalty or forfeiture under this act may be prosecuted and recovered in any court of vice-admiralty in Canada. Section 8 provides that the judge of the court of vice-admiralty may, with the consent of the person seizing any goods, ship, vessel, or boat, * * * as for-

felts under this act, order the redelivery thereof, on security by bond to be given by the party, with two sureties, to the use of Her Majesty, and in case any goods, ship, vessel, or boat, or the tackle, rigging, apparel, furniture, stores, and cargo so redelivered is condemned as forfeited, the value thereof shall be paid into court, and distributed as above directed. Section 9 says that Her Majesty's attorney general for Canada may sue for a recovery in Her Majesty's name any penalty or forfeiture incurred under this act.

I think that is a very strong reason to show your lordship that it does apply to proceedings in this court, because it is found in the middle of sections that apply to this court. I did not understand the counsel to what proceeding this section would apply. He spoke about some proceedings which, he said, might be necessary for the purpose of enabling the party to come in and make a claim, but I find no provision in this statute or any other law which provides for any preliminary investigation of that kind. Take the present case. There is nothing to be done to enable the party to come in and make his claim. When proceedings are taken he comes in to defend, and there is no preliminary investigation in order to enable him to defend, as far as I am aware. If that is the case, then to what proceeding can this section in regard to the burden of proof apply? It evidently refers to legal proceedings of some kind, and the party is here making his claim now. This is what the statute intends, and these are the proceedings in respect to which the statute says the burden of proof shall be on the claimant.

Now, my learned friend cited some sections of the customs act which are in different terms from section 10 in this act. I do not see that any argument can be successfully made from the fact that another act expresses the same idea in other words or greater number of words. The sole question before your lordship is whether or not the words in section 10, upon a reasonable construction thereof, have the meaning which we claim for them; and if they do admit of such a meaning it amounts to nothing that the words in other acts are framed differently. Unnecessary words may be used in another act, but that is no reason why the words in this act should not have the ordinary and plain meaning which attaches to them. Your lordship will see that the words here are perfectly plain; none could be plainer. "In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorized to seize under this act, oral evidence may be heard thereupon, and the burden of proving the illegality of the seizure shall be upon the owner or claimant."

Then my learned friend took the point that as there were pleadings in this case the Crown had assumed the burden of proof. I do not understand on what principle that can make any difference one way or the other. That would mean, if it means anything, that if there were no pleadings in the case the burden of proof is upon them; and if there are, the burden of proof is upon us. The fact that there are pleadings does not alter the burden of proof either one way or the other. That the fact that there are pleadings can alter the statute upon any question I never heard, and I think there is no authority for it.

Then the learned counsel went on to deal with section 10 as being *ultra vires* of the parliament of Canada. He argued upon this point at considerable length, and of course it is unnecessary for me to go over it. Section 9, clause 12, of the British North American act gives the Dominion parliament express power to legislate as to the sea-coast and inland fisheries. Now the argument is this: That because the parlia-

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Mr. MEAGHER. I went further, and said the power was not given them at all to make any.

Mr. BORDEN. It is simply a question of the jurisdiction of parliament. Parliament has the power to legislate in regard to the sea-coast and inland fisheries, and under this treaty the right is reserved to make restrictions or regulations respecting the enforcement of the treaty. Now suppose, for the sake of argument, that this is to be treated as a restriction or regulation—I think it is a mere matter of procedure—but suppose it could be treated as a restriction or regulation, then my learned friend says it is a restriction or regulation that interferes with the treaty, and on that account it must be considered to be null and void.

In the first place, I do not think it would be for this court, even if all my learned friend says on that point is true—I do not think your lordship would have the power to hold that the statute was *ultra vires* because it would be a matter between the two nations. If parliament should make a law which did interfere with this treaty, I do not think it could be held that it was *ultra vires* on that ground alone in this court.

But if your lordship will look at it you will see that it is not a restriction at all. It does not pretend to take away any rights Americans have under the treaty. All it professes to do is to regulate the procedure in case a charge of violation is made. But my learned friend, at considerable length on this point, says it is an unreasonable restriction, or rather, as I understand him, he said if this be a reasonable restriction and held to be good the Dominion of Canada might pass unreasonable restrictions, and therefore they had no right to pass any.

Now, your lordship will see that this does not restrict the rights of the parties at all. It simply provides what shall be the procedure in case there is a charge of the violation of the provisions of this statute. That is all it does; and it would be just as reasonable, as I contend, if there was a general provision of our law in respect to the burden of proof in all forfeiture cases, and my learned friend should come here and say that it was in violation of the provisions of the treaty, as it is for him to say that this particular clause in this particular statute is a violation of the treaty and beyond the power of Parliament to make. It would be quite as reasonable to say that the statute respecting forfeitures is a restriction as to say that this section is a restriction. The statute provides for forfeiture for the purpose of carrying out the treaty, and provides the mode of procedure for the purpose of carrying out the treaty; and if the latter can be called a restriction and invalid on that ground, then my learned friend could argue that the provisions in regard to forfeiture are invalid on that account. Of course, the statute as to forfeiture is a disadvantage to the Americans, because without it their vessels could not be condemned at all; but it is a procedure that we adopt in regard to our own citizens under the customs act and inland-revenue act, and which the United States have enacted in regard to their own citizens, and a provision that the English Parliament have made use of under the revenue laws.

Now, my lord, we say in regard to this provision that it is not a restriction under the treaty at all. It is simply a matter of procedure in our own courts, simply a matter of evidence in respect to which the fishermen of the United States have no more right to complain than they have of the fact that we have any procedure at all. They might

as well say that we have no right to have any procedure in our courts at all as to say that we have no right to provide for or limit our own procedure.

I take it that it can not be denied that our legislature has the right to control the procedure in our own courts, and if this is procedure, as I contend it is, then, certainly, it is not a matter which the learned counsel can attack here on the ground that the act is *ultra vires*. It is a provision which has been in force in this province for more than fifty years, and so far as I am aware this is the first time that its validity has ever been questioned. At all events I do not know of any case.

I wish to touch very briefly upon the question of fishing by the captain of this vessel through his agent, as we contend, Taylor. Suppose the master should come up the Annapolis Basin and build a weir and catch fish in it; I do not think there could be much doubt but that would be fishing within the meaning of the act. Then take the case of his coming up and hiring one of the weirs for a night and getting fish in it; it does not seem that there could be much doubt but that would be a fishing within the meaning of the act. Your lordship will see the distinction, if there is any, between what was done in this case and that case. The captain asks this man to set his nets that night, and agrees that he shall be remunerated in proportion to the catch.

The civilians held that an expectation dependent on a chance may be sold, and the illustration usually given is that of the fisherman who agrees to sell a cast of his nets for a given price; and this is adopted by Mr. Story. The illustration is perhaps not very well chosen. The case supposed is rather one of work and labor done than of sale. The fisherman owns nothing but the tools of his trade, i. e., his net. What is in the sea is as much the property of anybody else as himself. If a third person gives him money to throw a cast of his net for the benefit of that person, the contract is in its nature an employment of the fisherman for hire. If the contract were that the fisherman should throw his net for a week or a month, at a certain sum per week or month, and that the catch should belong to him who paid the money, no one would call this a contract by the fisherman for the sale of his catch, but a contract of hire of his labor in fishing for an employer. It is no more a contract of sale when he is paid by the job or piece for a single cast than when he is paid by the month for all his casts. (Benjamin on Sales, page 87, third American edition.)

So, we contend that this was a bargain and sale of goods or it must be work or labor. That if it is not a bargain and sale of goods, then it must be work and labor; and if it is work and labor, it can only be considered work and labor done by Taylor and Keene for their principal, the captain, who is fishing just as much as if he cast the net with his own hands and procured the fish.

My learned friend took the point in regard to the pleadings on this subject that it should have been charged that it was done by the agent. I do not think it is the practice, nor is it necessary, in suing for work and labor to set out by whom the work was done. If I should contract to-day to work on a house and should bring an action for the work and labor done, and it should turn out on proof that the work was done by my servants, I do not think it would be a valid objection that I had not set it out in the writ. I could prove that the work was done by my servants or agents as well as myself.

Then as to the question of intention to fish in prohibited waters. Your lordship will see that we have these elements; we have, in the first place, the bait that could be used for the purpose and the evident intention of using it for the purpose of fishing; we have the opportunity to fish within the three-mile limit; we have the fact that the vessel was a fishing-vessel, and the fact of the concealment of her identity; we have the fact of the untrue replies given by the captain in regard to the bait, and his statement that it was ten days old, and that he had

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not purchased any in the basin; we have the fact that he represented that the vessel had a British register. Now it seems to me that all these things taken together are pretty strong evidence of the intent to fish within prohibited waters. I suppose we must assume that the captain then had the same idea that the counsel urges now—that he had a perfect right to purchase bait to use outside; I suppose he must have had that idea as it seems to be the contention, and if that is the case it is difficult to understand any reason why he should have made these replies and tried to conceal these facts unless he intended to do something that was in violation of the law. My learned friend in connection with this point urged that putting ice on bait was evidence that he did not intend to fish in prohibited waters. But the bait would become deteriorated at once if it was not put on ice. He would preserve it just as much while he was inside as if he was to fish outside, because his fishing season would extend over some weeks.

This was not a vessel exclusively engaged in halibut fishing, but she was a hand-liner in codfishing. She was prepared for both. The argument as to the intention to fish is based on the assumption that she was exclusively a halibut vessel; but that does not meet this case, because she was not fitted out exclusively for halibut fishing.

Now in regard to the purchase of bait being a preparation to fish. I understood at the commencement of the argument on Friday that it was admitted by my learned friend that preparation to fish would cover the purchase of bait, although afterwards I understood him to base some argument on the opposite view.

Mr. MEAGHER. The admission I made was that buying bait was in a sense a preparation to fish, but not the preparation covered by the treaty.

Mr. BORDEN. The learned counsel who opened this case cited authorities, it seems to me, sufficient to show that it was a preparation to fish. Now, one argument was that this means an immediate preparation to fish, or "about to fish." It is said the words "preparing to fish" are broad enough to cover the purchase of bait, because the purchase of bait must be a preparation to fish. If it is not what is it?

The COURT. It is a preparation to fish, but is it the preparation to fish in the sense intended by the statute? Putting sails and rigging on a schooner, putting on her cables and anchors, putting her seines on board, all that is preparation to fish, but you could hardly say that that is what the statute intended.

Mr. BORDEN. But we have proved in this case that here was a purchase of bait with the intention to use it to catch fish—

The COURT. So you might have the purchase of rope, cables, anchors, and seines, which are just as essential to catching fish as bait is.

Mr. BORDEN. Just as essential, but it has not the same immediate comprehension that the purchase of bait has. The purchase of a cable is a thing which any vessel could purchase and would have to make, but the purchase of bait is something that applies immediately to fishing.

The COURT. The statute is peculiarly worded; there are three clauses, "Fishing in prohibited waters," "Having fished in prohibited waters," and "Preparing to fish in prohibited waters." Now, does that mean immediate preparation, that is, preparation to fish within the three-mile limit, as if a schooner should see a school of mackerel coming and throw the seine over, or throw bait over the side of the ship in order to coax the fish out of the limit—is it that kind of immediate preparation, or immediate action, or is it a getting ready, at any distance of time, with a view to utilizing that preparation at a distant period?

Mr. BORDEN. In the first place, your lordship will recollect that the Crown officers gave an opinion that the throwing of bait overboard would not be preparing to fish, but would be fishing; and I think putting the nets over would not be preparing to fish—

The COURT. I do not think throwing bait over could be said to be fishing, because that would not catch fish. There were the "jig days" when the bait was ground in a mill and thrown overboard in order to induce the mackerel to rise to the surface.

Mr. BORDEN. But, my lord, they say, "We are also of opinion that casting bait to lure fish in the track of any American vessel navigating the passage would constitute a fishing within the negative terms of the convention."

The COURT. What I say is, if an American schooner should lay to within a mile of the shore and pour bait out of her barrels over the side of the vessel for a week it would not be fishing, nor would it be an offense. What constitutes the offense there is the effort to lure the fish out of the three-mile limit.

Mr. BORDEN. Yes, my lord, but it is not put upon the point of preparing to fish but on the ground of actual fishing.

Now, as the counsel said in opening, your lordship should put such a construction on the statute as to preserve the rights of our fishermen, which was the object for which the statute was passed. It must be presumed that the legislature intended to give the words a meaning which would carry out the effect of the statute. If that is the case, it seems to be quite natural that they intended to prevent the American vessels from coming inside to prepare for their fishing outside, as well as to prevent their fishing or preparing to fish inside. My learned friend dealt with the grammatical construction of the words to fish inside as well as to fish outside, and he contended that the grammatical construction favored his view of the case. I do not think the grammatical construction does favor his view at all. Your lordship will see that this adverbial phrase "within three marine miles of any of the coasts, bays, creeks, or harbors," in the first place modifies the word "fishing" and then modifies the words "to have been fishing," and then the question is whether it modifies the word "preparing" or the words "to fish." The ordinary rule of construction is that it should relate to the same kind of word, to a word in the same mood and tense in the last clause as in the first clause. Now it modifies the participle "fishing" in the first and second clauses, and by all ordinary principles it should modify the word "preparing" in the third clause. "Fishing," "to have been fishing," or "preparing to fish." We have these three words all participles having the same character. Now I say the ordinary grammatical construction is that the adverbial phrase of locality, which comes afterwards, should relate to these words all in the same mood and tense. The words "to fish" are only qualifying words indicative of the object of the preparation, and it is not according to the grammatical construction of the words, nor is it to be assumed that the adverbial phrase which comes afterwards relates to them and not to the active word "preparing."

Now, in describing the act of preparing to fish, it requires three words. In the Latin language, and probably in the German, it might be expressed in one word, and there would be no doubt about it. My learned friend's construction would require a repetition of the words—

The COURT. Suppose an American vessel was lying within the three-mile limit and her bait was all gone and another American vessel came in beside her and gave her ten barrels of bait. Would that act alone be "preparing to fish" under the statute?

Mr. BORDEN. In the first place the vessel would have no right to enter.

The COURT. I am putting it very strong in your favor that both were violating the treaty—that is, they came in here for an illegal purpose, which is better for you as far as this proposition is concerned, and what I am asking you is whether that act alone would be a “preparing to fish” under the statute?

Mr. BORDEN. I think if she purchased bait for the purpose of fishing it would be a “preparing to fish.”

The COURT. I am assuming that her bait was all gone and that she would have to depart or go home if she did not procure a supply.

Mr. BORDEN. If she got it for the purpose of fishing I think it would be a “preparing to fish” within the terms of the statute. I was just stating that the argument of my learned friend requires that these words, “within such distance of such coasts, bays, and harbors,” shall be repeated twice or else it seems a very extraordinary construction of the statute shall ensue. Otherwise a preparation outside to fish inside would be an offense under the statute and I do not think that would be a reasonable construction. Unless my learned friend repeats the words twice, and I see no reason why they should be, then he is driven to this: that a preparation outside or in their own harbors or outside of the three-mile limit for the purpose of fishing within the prohibited waters would be an offense against this statute.

Now, as to the contention of my learned friend that it is solely a question of what the party intends to do with the bait, it seems to me that that is a construction which Parliament never intended. If his contention is correct it depends upon the intention of the party while he is making his preparation; if he intends to use it in prohibited waters it is an offense, and if he intends to use it without it is not an offense.

The COURT. You say it is an offense either way. Mr. Meagher says it is not an offense if he intends to use it outside. If he is right in point of law, surely he ought to be allowed to show with what intention the bait was procured. His intention would not come in at all if your view of the law is correct.

Mr. BORDEN. The intention does not come in at all; it is the overt act. He says it depends on the intention. Suppose a man is making preparation to fish in the harbor. We say that is the offense, whether he is going to fish inside or outside. My learned friend says that is not so, that it depends upon his intention. Now, what would be the result? The result would be that that clause in the statute would be utterly useless and meaningless. He may have no particular intention about it. Suppose he has no intention at all, or in the course of his preparation he has the intention to fish inside and then changes it and intends to fish outside? He may change his mind a dozen times within the course of his preparation.

The COURT. Assuming that if he intended to fish outside it is not an offense against the statute, then he never commits an offense by buying bait or preparing to fish while inside, and the offense is never completed until he departs from his intention and fishes inside.

Mr. BORDEN. Then the words would have no meaning at all, because he would never actually commit the offense until he fishes, and that is “fishing.” The words must have some meaning or the legislature would not have used them, but my learned friend’s construction makes them without any object or meaning whatever, because it would be a question of intention within the party’s own mind, which could not be fixed in any way until he committed some overt act, and that would be fishing itself, which has already been provided for.

Now, my lord, I think it will be assumed that the legislature endeavored to deal with acts and not with intentions, and all the legislature would be dealing with, if my learned friend's contention is correct, would be with intentions, because when the intention becomes an act that is already provided for.

The COURT. It seems to me you cannot escape a contemplation of the intention, if it would be no offense to procure bait and prepare to fish in British waters, to fish outside of British waters. If that would be no offense, then surely you must entertain the intention with which the party does the act.

Mr. BORDEN. My point is, that the legislature was not dealing with the intention as the main point at all, but the legislature was dealing with the act of preparing to fish.

The COURT. If the meaning be as contended for by the other side, then preparing in British waters to fish outside prohibited waters is an innocent act, which the party has a right to do, and surely, then, whether the act was performed with the purpose of fishing in British waters or out of British waters, is a question of intention to be proved, and which can be proved by the conduct and acts of the party.

Mr. BORDEN. Then the whole thing comes down to a question of intention within the party's own mind, which could not be proved, as he might change it a dozen times, and when he came to manifest the intention by an overt act, that would be fishing itself, already provided for, and therefore we must assume that the legislature meant something more than that; that they referred to "preparation," and were not dealing with intention as the main object, as would result if my learned friend's contention is correct. As I have endeavored to point out, his intention in the course of preparation might be changed a great many times, and in that case there would be or would not be an offense, according to the argument of my learned friend, as the party had one intention or the other. If you adopt our contention, all you have to look at is the active part, the preparation to fish.

Now, the American fishermen under the treaty had a right to enter for four purposes only, and I think it would be a fair construction of the statute to assume that they intended to cover preparations to fish anywhere. The words "preparing to fish," according to our construction, may not cover everything outside of wood, water, repairs, and shelter, but we contend that it would cover all such preparations as would be an object for our own fishermen to have a prohibition in respect thereto. The words "preparing to fish," if they have the meaning we contend for, would probably cover the greater part of the objects for which American fishermen could enter, irrespective of these four objects that they have a right to enter for. I think it should be assumed that the legislature, having given them the right to enter for these four purposes, in using the words "preparing to fish" endeavored to cover all such purposes, outside of these that I have mentioned, as would reasonably be intended by a broad construction of these words. I do not see any reason why they should be limited, because the Americans have only the right to enter for the four purposes, and that is one reason for the broad construction I ask to be given to it.

My learned friend also argued that the purchase of bait within the harbors would come within the term of repairing damages in the proviso.

The COURT. So far as I am concerned, you need not take time to discuss that, for I am not with Mr. Meagher on that point.

Mr. BORDEN. Then, if your lordship pleases, I have nothing more to say.

IN THE VICE-ADMIRALTY COURT AT HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL "ELLA M. DOUGHTY"
 and her cargo. } No. 472.

ACTION FOR FORFEITURE.

Examination held at Halifax this 17th day of Mar., A. D. 1887, before me, Wilson W. McLellan, a special commissioner for that purpose appointed by an order of this honorable court, dated the fifth day of March, A. D. 1887.

DONALD McRITCHIE sworn.

Ex. by Mr. BORDEN :

My occupation is fishing and farming; am 53 yrs. of age, and reside at Eel cove, St. Ann's, across the harbor from Englishtown. It is marked Smith's cove on the chart "W. W. M." I have been going to sea at various times, and commenced fishing about 30 years ago; been fishing more or less ever since. During the last four years I have been fishing. In the spring of the year we fish for spring herring. We commence fishing for them when the ice gets clear, generally about the first of May, but some years later. We catch them with nets in St. Ann's harbor and in St. Ann's bay. St. Ann's harbor, opposite to Englishtown, is about one mile wide, and farther up it is wider; in its widest part it is between 3 and 4 miles wide. There is a narrow outlet from the harbor into St. Ann's bay. The outlet is not more than a quarter mile wide. St. Ann's bay, from the harbor out, gradually widens till near the outer part of it; at the outer part of it, from Cape Dauphin to Indian Brook bay, it is about 4 miles wide.

Spring herring is generally salted down for home use, and is also sold for bait; very few go to market. When I speak about bait, I mean bait for codfish. I do not know anything about herring being used for halibut bait. I saw the *Ella M. Doughty* in May, 1886, and I remember the day she was seized; it was on a Monday, and I can not say what day of the month it was, but it would be somewhere about the middle of the month. I first saw her on the Tuesday before she was seized as she was coming in St. Ann's bay. She came in and anchored about half a mile outside of the entrance to the harbor; she anchored there in the afternoon of Tuesday. The first time I boarded her was on the following day, Wednesday morning. I went out to her in a boat, and I had herring with me which I caught that same morning at Smith's cove, close to where I live. I asked the captain if he wanted to buy any herring for bait, and he answered that he wanted a very few barrels, just enough to bait his trawls once.

I told him I would sell him herring for 25 cents per hundred; then he said he would buy them. After I made the bargain with him he told me to drop the boat around to the outside of his vessel, and that would take fish from that side. I dropped the boat around to the outside of the vessel, counted out the herring into baskets, and handed them up on board, and the captain then paid me the amount due me. There were 900 herring, more or less. I had some conversation with the captain. He told me that he had been into Sydney harbor and that he had a permit from his Government to touch and trade in any foreign

port; that he went to the custom-house in North Sydney and there they told him his permit was no good, and he allowed that the custom-house officers down there did not understand the matter between the two Governments. He said he had been on the Western banks and could not get any halibut, but was going to try fishing down by St. Paula.

I was on board for nearly an hour, or something less than an hour. About the time I was going to leave the vessel another boat came along side with Donald McInnes, D. J. McAskill, and Donald John Morrison on board. They commenced hoisting the mainsail on the vessel just as I was leaving, but I could not say exactly how long after that she started to go away. I don't think it was very long. The wind that day was SW. On Tuesday, the day before, it was near about NW., and blowing strong and on the previous day, Monday, it was about the same and blowing very heavy. I was on board of the vessel before she was seized—on Saturday. I did not do any business with her that time, but was on a visit merely. She was in the harbor about half a mile from the entrance. I was on board again on Monday afternoon, the day she was seized. On that occasion I saw the tide-waiter, Mr. Duncan McLeod, on board. I know Mr. Donald McAulay; he is the collector of customs and has acted in that capacity since 1875; he was not on board on that occasion. I was below on Saturday, but not in the hold.

I took my boat around to the outside of vessel at the request of the captain, because I understood that he did not want to take the herring from the other side. I do not know what difference it would make in taking in the fish from the outside in preference to the inside. The herring could have been taken in from one side as well as the other.

Cross-examined by Mr. MEAGHER:

I can read and write a little. We call Cowdy Point, on the chart, "W. W. M.," Mary's Rock. I should say it is about 4 or 5 miles from Cowdy Point to Island Point. The places referred to in my direct evidence are farther out. I live one and a half miles from where the vessel was anchored on Tuesday and I could see her from my house. She was anchored outside the harbor. There was a schooner there also named the *Lady Franklin*, belonging to St. Ann's. The wind was light SW. when I went to the vessel with the herring.

DONALD MCRITCHIE.

Signed and sworn at Halifax, in the county of Halifax, this 17th day of March, A. D. 1887, before me.

W. W. McLELLAN,
Commissioner, etc.

Adjourned till 2 o'clock p. m.

TORQUEIL McLEAN sworn.

Ex. by Mr. BORDEN:

I live at Englishtown and keep a ferry there. My occupation is fishing and farming; have been fishing for these last 30 years; have fished in St. Ann's bay and to the northward of that end on the Grand banks; have fished for codfish, halibut, herring and mackerel; have fished for herring and codfish in the harbor and in the bay. The herring begins generally about the first of May or as soon as the ice is clear, and we commence to catch codfish about the middle of May both in the bay and harbor. I have fished in boats in the bay; at Cape North I have fished in whale boats.

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ALD McRITCHIE.

Halifax, this 17th day

McLELLAN,
Commissioner, etc.

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I saw the *Ellen M. Doughty* 8 or 9 miles off the entrance of St. Ann's harbor, between Cape Dauphin and Plaster point, and she came in and anchored about a half mile from the entrance of the harbor. She anchored about twelve o'clock on Tuesday in May, 1886. I remember the time when she was seized, and the Tuesday I refer to was the Tuesday before she was seized. She was a two-topmast schooner and had her name on her stern. The name on her stern was *Ellen A. Doughty*. There was no other vessel called the *Doughty* in there in May, and there was no other vessel by that name that was seized. I saw some of her crew on the evening of the day she came in. There were 4 or 5 of them. I saw them on the road in Englishtown just below my house. I knew that they were the crew, because I asked them if they belonged to the vessel and they told me that they did. I also asked them if they wanted to buy bait and they answered yes. I told them if I could get any herring in my nets I would take them on board the next morning; they said all right, for me to do so. Nothing was said about the price at that time. I then went to my work ploughing, and in the evening I set my nets about half a mile inside the entrance of the harbor. The harbor is one and a half miles across where I set my nets. In the morning I took my nets in and got between 500 and 600 herring. I then took them on board the vessel. I saw the men who had spoken to me on the night before and a man who acted as captain on board the vessel. The vessel was in the same place where she had anchored the day before. I asked the man on the vessel if he wanted to buy any herring; and replied yes. He said that my neighbors sold him fish for 25 cents per hundred. I replied that was not enough and my price was 30 cents; he told me to count them out and send them on board. I did so and he paid me for them. I sold him all I had caught. Herring is used for bait for codfish, halibut, hake, etc., at that time of year. While I was there I saw them icing the fish they bought from me. I saw them putting these fish in ice in the hold in a square place which they call the ice-house, built inside of the vessel. I had seen things of that kind in American vessels before. The place is used for keeping and preserving bait. When I met the crew on shore nothing was said as to the time when I should take the bait on board. When I was leaving the vessel they were just getting under way. I saw Donald McInnes, Donald J. Morrison, and Daniel McAskill on board the vessel when I was leaving her. I was on board again the day after that. When she got under way on Wednesday morning she went out 5 or 6 mile and came back again and anchored in the harbor, and I went on board of her when she was going out on Thursday morning. On that last occasion I sold him about 600 herring; it was the same man to whom I had sold fish on the previous occasion. The price was 30 cents per hundred, and I was paid for them. The vessel was seized the following Monday. She was seized on the north side of the harbor and was taken across to the southern side, and she remained there 30 or 35 days before she was finally taken away. The wind was NW. when she first came in on Tuesday, and it was a 7 or 8 knot breeze. The day before she came in the wind was about NW. or WNW.

Cross-examined by Mr. MEAGHER:

It takes about 500 of those herring, not split, to make a barrel. From Cape Dauphin to the upper end of the bay, not including the harbor, it is four or five miles. The land on the opposite side from Cape Dauphin is called Island point, and the bay is about 6 miles wide there. The vessel went out that day, and was forced back on Thursday evening by

ice and wind. During the rest of that week the wind was to the eastward; that would be against her going out, and there was ice outside; the ice was pretty heavy, and it would be some risk for a vessel to go out in that kind of ice. I know that the vessel was seized only from what other people have told me. I did not know any of the men I met on shore, and I had never seen any of them before; they were traveling about on shore, and were sailors belonging to the vessel.

TORQUEIL McLEAN.

Signed and sworn at Halifax, in the county of Halifax, this 17th day of March, A. D. 1887, before me.

W. W. McLELLAN,
Commissioner, etc.

MALCOLM McDONALD sworn.

Ex. by Mr. BORDEN:

I reside at Englishtown. I saw the *Ella M. Doughty* on the evening of a Tuesday in the spring of 1886. She was in St. Ann's harbor and bay from Tuesday till the following Monday. I do not know anything about what happened on Monday. I think she was seized on Saturday, and she remained in the harbor after that for some time. After she was seized I saw her every day in the harbor. When she first came in she anchored pretty near off my place. Where she anchored it was about a quarter of a mile outside the entrance of the harbor.

On Wednesday morning Donald McInnes, Donald Morrison, and Daniel McAskill were setting nets in the bay, and I watched them till they came on shore to see what kind of a catch they had; when they came in they had between 1,200 and 1,400 herring. A man who told me that he was one of the *Ella M. Doughty* crew came on shore in one of the vessel's boats and came over to where the men were working taking the fish out of their nets; he told them to take their fish on board the vessel as soon as they were ready. He then went back to his boat, which went in the direction of the vessel, and the three men went to breakfast, and when they returned from breakfast they started for the vessel with the herring. I do not know whether they put the herring on board or not.

Cross-examined by Mr. MEAGHER:

The nearest that I was to the vessel was after she was seized and about 100 yards from her. I am about 52 years of age.

his
MALCOLM X McDONALD.
mark.

Signed and sworn at Halifax, in the county of Halifax, this 17th day of March, A. D. 1887, before me, the same having been first read over to the said Malcolm McDonald.

W. W. McLELLAN,
Commissioner, etc.

Adjourned till 10.30 a. m. Friday.

(Indorsed:) No. 471. Vice-Admiralty Court. The Queen vs. Ship or vessel *Ella M. Doughty*.

Evidence of McRitchie, McLean, and McDonald.

N. H. MEAGHER, Q. C.

FRIDAY, March 18th, 1887.

Resumed. Daniel McLennan sworn as interpreter.

DONALD MCINNIS sworn.

Examined by Mr. BORDEN:

In May, 1886, I lived in Englishtown. I know Donald J. Morrison and D. J. McAskell. Saw the *Ella M. Doughty* for the first time in May, 1886, and saw some of her crew between three and four o'clock in the afternoon of Tuesday, in May, and Morrison and McAskell were with me. It was at D. J. McAskell's place, and the men were going up towards Englishtown. Morrison, McAskell, and I walked with them until they arrived at Englishtown. The crew numbered six; they walked with me sometimes and at other times with Morrison. I and crew were talking about big Angus McAskell. They asked me if I knew where McAskell was buried, and induced me to show them where his grave was; we then talked about herring bait and fishing. In the course of the conversation I asked them where they came from, where they were going, and what their business was. They said they came from a certain bank and wanted bait. They asked me whether I could get herring and take it to them at night. I replied that the place where the nets were set was so far away that it was impossible for me to get them at night. We came to no definite conclusion, as I did not know whether I could get herring that night or not. I set my nets that night and got a large catch of herring. Morrison and McAskell were with me when I set the nets. The nets were set in Dunan Robert's cove, about a half mile or more inside St. Ann's harbor. I went to my nets the next morning about sunrise. After we caught the fish we took them in the direction of our homes. While we were rowing our boat down to our place a dory came from the *Ella M. Doughty* and asked us if we would give them the fish. I answered that I did not know. We then went with my boat to my home. The vessel's dory went on shore a little above where we landed. We began to clean our nets, and while doing so the crew from the dory came to our boat. There were two of them, and they enquired if they could get the herring. I asked them how much they would give for them. They answered two shillings per hundred, and that I should take them on board. I agreed to do so. The crew of the dory remained there scarcely a quarter of an hour. After we cleaned the nets we went out to the vessel with the herring. The men belonging to the dory left and went up to the dory, and then went on board the vessel. The dory reached the vessel before we did. I went on board the vessel, and the crew told me they could not give me two shillings for the herring. I said if I had known that I would not have come to the vessel with the fish. They told me that Donald McRitchie had been selling fish to them for twenty-five cents per hundred, and that if I would not sell them for that money they would not take them at all. I then accepted the twenty-five cents per hundred, sold them fourteen hundred, and they paid me for them. Can not say which one of the crew gave me the money. The two men who came down to my boat while on shore were the same men who were on shore the night before. I saw all the men who had been on shore the night before on the vessel when I boarded her, also Torquell McLean and Donald McRitchie, but no others whom I knew. I was in the cabin of the vessel when I was on board, but not in the hold. After I made the bargain and sold the fish we left and went home. After that, the next morning,

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TORQUELL McLEAN.
Halifax, this 17th day

W. McLELLAN,
Commissioner, etc.

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COLM X McDONALD.
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Halifax, this 17th day
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W. McLELLAN,
Commissioner, etc.

The Queen vs. Ship

d.
H. MEAGHER, Q. C.

I was on board again. The vessel was then just under way at the entrance of the harbor. Morrison and McAskell were with me on that occasion. We had herring with us in our boat. We went on board and they took our boat in tow. I asked them to buy our fish. They said they would not touch them until they got out of sight of the town. One of the crew said that after they got out a piece they would take the fish on board, and then they would return. They bought the fish, about three barrels, and paid us three dollars for them. The house in which I was living at the time is about one-half mile outside the entrance of the harbor. The vessel returned with us after we sold the herring, and they let us off right opposite the house in which I was staying. When they agreed to take the bait on the last occasion and pay us three dollars for it, the vessel was quite a piece out from the mouth of the harbor. The reason I did not get out of the vessel when they first passed my house was because they did not wish to buy the fish until they got outside of the town, and I went out with them to accommodate them. I am fifty-nine years of age, and have been fishing about forty years. Herring is used as bait for codfish and halibut. In St. Ann's bay and St. Ann's harbor they catch herring, codfish, mackerel, and many other kinds of fish. They commence to catch herring about the middle or last of April, and codfishing begins about the last of May or first of June. I have fished in the harbor and bay of St. Ann's. They catch codfish there sometimes within twenty fathoms of the shore, and from that out to one hundred fathoms and more. On the second occasion, when I was on board on Wednesday, I was in the hold of the vessel; saw the crew take my herring in baskets, others handing it down the hold, and others fixing it with ice. I saw quite a quantity of ice in the hold. I saw halibut as well as herring there. I know the halibut was fresh, because I eat some of it; they gave me one.

Cross-examined by Mr. MEAGHER:

On the first evening when we saw the sailors on shore I took part in the conversation with them, but I can not say who did the most talking with them. I went with them about a half a mile, and was talking with them during that time in the English language. I did my business with the vessel in the English language. ["As I can understand more than I can speak." This last was spoken by the witness in explanation, but objected to by Mr. Meagher.] The crew did not say they came on shore for the purpose of seeing McAskell's grave, but that was the first subject about which they began talking when we met them. It was on Tuesday. I remember that it was Tuesday because I came from my own house on Monday, and the next day would be Tuesday. I do not remember it from talking to Mr. McAulay and the rest of the men who came to Halifax for examination. The first time that I was on board the vessel I was paid for the fish on a little house about the centre of the vessel. The little house is forward of the hatch; now I think the little house is aft of the hatch. When the fish were being taken out of my boat on the second occasion, I was sitting on a barrel on the deck of the vessel. Codfish is sometimes caught when there is ice in the bay, but it is not at all customary to fish for codfish with lines when there is drift-ice in the bay.

(Mr. Meagher asks the witness a question, and Mr. Borden objects to such question on the ground that the witness did not say what Mr. Meagher suggests in his question. Thereupon Mr. Meagher refuses to go on any further with the examination of this witness.)

Mr. Borden undertakes to make no further objection without first asking the witness to retire.)

his
DONALD X MCINNES.
mark.

Signed and sworn at Halifax, in the county of Halifax, this eighteenth day of March, A. D. 1887, the contents having been first read over and explained to the said Donald McInnes in the Gaelic language by Daniel McLennan, of Halifax, who first was duly sworn to interpret the same before me.

W. W. McLELLAN,
Commissioner, etc.

DONALD J. MORRISON sworn.

Examined by Mr. BORDEN:

I live in Englishtown; saw the *Ella M. Doughty* in the month of May, 1886; she was coming into the bay of St. Ann's when I first saw her. She anchored outside the entrance to the harbor. I saw some of her crew on Tuesday; know Donald McInnes; he was present when I saw the crew. The crew were going up the road. We talked with them. We spoke of big Angus McAskell and the grave-yard, and after that we spoke of herring. I told them I was going to set my nets, and they told me if I could get any herring to take them on board the *Ella M. Doughty* in the morning. In walking along the road McInnes was ahead and I was behind; some of the crew were with him and some were with me. When they told me to bring my fish on board in the morning, I answered that I would do so if I could get any. The vessel was seized on Monday, and the Tuesday which I speak of was the Tuesday before that Monday. I set my nets that night. Donald McInnes and Daniel McAskell were with me. The nets were set in the harbor about one hundred yards from the shore. The next morning we took our nets in and rowed down home. McInnes and McAskell were with me. My place is outside the entrance to the harbor. The vessel was anchored in the same place as before. On our way down in the boat we saw a dory coming from the vessel in our direction, and we spoke to the men in the dory. I think they spoke first as far as I can recollect. They asked us if we got any herring in the nets, and we told them yes. They then told us to take them on board the vessel. We rowed on shore and the dory landed a piece above us, and one of the men from the dory came down from where we were taking the herring out of the nets, and waited till we were pretty nearly through. He then returned to the dory and the dory went to the vessel. As soon as we were ready we went on board the vessel with our herring, counted them and put them up on deck. A man whom I took to be captain paid me twenty-five cents per hundred for them. I saw all the men that had been in the dory on board the vessel. All the men whom I had been talking with the night before on shore were also on board the vessel.

Question. Did any of them at any time tell you what they wanted the herring for?—Answer. Yes. They said they wanted them for halibut fishing. I saw the vessel the next day. I was on board of her the next day after I sold the herring, and when she was going out the entrance of the harbor. During the night she had remained in the harbor. When I went on board the second time McInnes and McAskell were with me. That time we were about an hour on board as far as I can judge. When

we went on board Wednesday to sell some herring they told us they would buy some, and they did so. When we got a piece from the shore they took the herring on board, and at that time we were past our own place. We had passed it about a half mile. That morning we had about three barrels of herring more or less, and we received for them one dollar each in American money. When we went on the vessel she went out some distance with us, then rounded up and tacked into shore and let us off; then she went out. We did not leave the vessel opposite our own place because the captain told us not to leave until he could get the herring. He did not take them then because he did not like the people on shore to see him doing so. After the vessel was seized she was anchored off the custom-house office at Englishtown, and she remained there for about a month or two after that. We caught the fish that we sold the second time on the same morning that we sold them. On the first morning we had fourteen hundred herring all told.

Cross-examined by Mr. MEAGHER:

We all made the bargain with them for the fish. When we went on board the second time we told them we had herring for sale and wanted to know if they would buy them. On the first occasion I made the bargain for my share of the fish, and McInnes and McAskell did the same. I can not read English. I was not present when the vessel was seized, and I only know that she was seized by what others told me. We had no trouble in making the bargain for the fish, as the captain put the price on them and we accepted it. That is about all that was said. When we went on board the second time the vessel was under way going out the entrance of the harbor, and we made our boat fast and sailed out with her.

his
DONALD J. X MORRISON.
mark.

Signed and sworn
day of March, A.
(S'g'd)

Halifax, in the county of Halifax, this eighteenth
7, before me.

W. W. McLELLAN,
Commissioner, etc.

DANIEL G. McASKELL sworn.

Examined by Mr. BOB DEN:

I reside at Englishtown, outside the entrance of St. Ann's Harbor. Have had at least five years' experience at fishing. In the bay and harbor of St. Ann's cod-fish, herring, mackerel, squid, salmon, haddock, and hake are caught. The spring herring fishing commences about the first of May, and again about the first of July. The cod fishing commences about the latter part of May. I have fished in St. Ann's Bay and Harbor for codfish, herring, mackerel, haddock, hake, and squid. We catch codfish, haddock, and hake in some parts of the bay within two or three hundred yards of the shore. The harbor of St. Ann's is about a mile wide in the narrowest part, and the widest part is about three miles, to the best of my judgment. From Gowdy Point across the bay to the other side would be three miles at least. I saw schooner *Ella M. Doughty*. She was at Englishtown for over a month. Remember the day she was seized and saw her after she was seized. After she was seized she was brought over and anchored opposite the custom-house office, and I saw her there often. When lying there an-

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D J. X MORRISON.
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Halifax, this eighteenth

V. McLELLAN,
Commissioner, etc.

of St. Ann's Harbor.

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chored she was over a mile from my place and I could not see her from my house. She was seized on Monday about the middle of the month of May, in the year 1886. When I first saw her it was on the Tuesday before she was seized. She was then coming up the bay. She anchored outside the entrance to the harbor. Saw some of her crew at English-town that evening. We were just beginning to fish at that time for herring, and we set our nets that evening. Donald McInnes, Donald J. Morrison, and myself set the nets. The three of us started the next morning to take up the nets. Got about fourteen hundred herring and started home with them. In order to get home we would have to go through the entrance to the harbor. On our way home a dory left the schooner and met us between the entrance to the harbor and where we intended to land. The men in the dory asked us if we had any herring that morning. We said yes. They told us to land at the next point, and that they would land above and would send one of their men down to our boat, and he could go back again to let them know when we would be ready to go out to the vessel. We landed, and they landed above where we did, within a quarter of a mile from us. A man came down from them and remained with us until we were pretty nearly ready; then he went back to the dory; we then started out to the vessel. I can read and write English. I saw the name *Ella M. Doughty* on the vessel; I saw it several times. When we arrived at the vessel we made fast to her, and as far as I can recollect McInnes went on board first; he was on board while Morrison and I were counting out the herring. We received twenty-five cents per hundred for them. I saw the men who were on shore and the men who were in the dory on board the vessel while I was there; I did not know their names and they did not belong to Englishtown. I also saw Mr. Donald McTitchie and Tor-queil McLean on board the vessel. She was rather close to the shore, and had moved a short distance out into deeper water from where she had anchored the night before. After the vessel was seized I saw the same crew on shore. I was on board of her again, I think, the next night; she was lying in the harbor. We sold bait to her a second time on the morning of Thursday, and the same two men were with me on that occasion. At that time we overtook her coming out the entrance of the harbor, boarded her and asked them if they would buy some her-ring; they replied but they were not certain about it, and at all events would not take any until they got outside. We went out with the ves-sel about three-quarters of a mile from the entrance of the harbor, and about half a mile beyond our own place. We did not leave the vessel while passing our own place, because they wanted us to remain on board till they got farther out, and then they would take the herring. We wanted them to leave the vessel to off our place and take the herring on board. They did not do that, but went out about half a mile or so, then they took the herring from our boat in nets and did not count them. We received one dollar each for the fish in American silver. After they had taken the herring and paid us they gave us a halibut each. The halibut were small and fresh. I took the one they gave me home and eat it. After they gave us the halibut they tacked in close to shore, and then we left them about a half mile below my place. The vessel stood out the bay after that. Afterwards, the same evening, I saw her coming in; and she was anchored in the harbor between that time and the time she was seized. I do not remember of seeing her go out on Friday or Saturday, but she might have done so for all I know. When we left her the first day she was getting under way to go out.

Cross-examined by Mr. MEAGHER:

Donald McInnes at that time was living with D. J. Morrison, about three hundred yards below our place. When the ice is in the lower end of the bay we sometime fish in the upper end. It is a rare thing to catch halibut in St. Ann's bay, but I have seen some caught there. I have sailed out of the bay, but not very far. The general fishing-grounds are outside of Cowdy point and Island point, but they sometimes fish inside. They usually fish outside as far as five or six miles beyond Cape Dauphin. The cod-fishing had not begun at the time the vessel came there. It was somewhat late last year on account of ice. They did not do much at cod-fishing last year before the first of June. Only one man came ashore to us from the dory. The vessel was under way when we overtook her on the second occasion. We left the vessel that morning about a half mile below my place; when I was speaking of distances I was giving but a rough guess. The vessel was pretty near in the middle of the bay when going out.

DAN. G. McASKELL.

Signed and sworn at Halifax, in the county of Halifax, this eighteenth day of March, A. D. 1887. Before me,

W. W. McLELLAN,
Commissioner, etc.

Adjourned till two p. m.

FRIDAY, March 18th, 1887—2 p. m.

Resumed.

ANGUS McLEOD sworn.

Examined by Mr. BORDEN:

I reside at St. Ann's, in the county of Victoria, C. B. Saw the schooner *Ella M. Doughty* on Tuesday, the eleventh of May, 1886; saw her at anchor outside the light-house in St. Ann's bay about a half mile from the entrance of the harbor. I was on board of her on Tuesday, the eleventh of May, 1886. I saw a half-dozen of her crew, and a man who represented himself as captain. This man who represented himself as captain was a medium-size man, had a thin face, dark skin, and mustache, and was about five feet eight or nine in height; can not recollect whether there were other men there or not when he said that he was captain. I first had conversation with him in the cabin. He told me that he had a permit from the authorities in the United States signed by the President to buy bait. I then said probably the two Governments have come to terms. I think he told me that they would not allow him to buy bait. I told him he could find that out at the custom-house. I then prepared to leave. He called me down in the fore-cabin and asked me if I thought there was any danger in buying bait there, and if there was any bait to be got. I told him that there was danger, because the officer on shore was a very particular man about his duties, and that if he was found buying bait there he would be seized immediately; he then said that his bait was getting stale, and that he would have to get some somewhere or else go home without any fish. There was no person present at this conversation, and it took place between four and five o'clock in the afternoon. I arrived in there about three or half-past three, and he got in ahead of me probably two or three hours. I saw the name *Ella M. Doughty* on the vessel, and she hailed from Portland.

Cross-examined by Mr. MEAGHER :

I am no relation to Mr. McAulay. The name of my vessel was the *Lady Franklin*. I did not see the *Ella M. Doughty* go in the harbor. I left there on the seventeenth or eighteenth of May. I went on board of her merely on a visit. I told the collector of customs about this conversation when I was questioned about it some time after I came back from Saint Pierre, a long while after the vessel was seized. He was not the first person I spoke to about the conversation. I mentioned it to some parties, and they might have told him. I do not know how the collector of customs knew that I was on board of the vessel. I told my own crew about this conversation at the time that I heard that the vessel had been seized and I spoke to no one about it from the time it took place till the time when the vessel was seized. I said afterwards that I told the poor fellow to look out for himself; I told my crew that. I do not remember the name of any place where he said they would not allow him to buy bait, I believe he said he was in to Sydney. He told me that he had a permit and that he thought that he could not buy bait because others were not allowed to do so; I would not undertake to swear that he told me that they would not allow him to buy bait. I was about three-quarters of an hour on board the vessel. I had not seen him before nor have I seen him since. I do not know who gave the information to the collector; I never heard and I never made it my business.

ANGUS MCLEOD.

Signed and sworn at Halifax, in the county of Halifax, this eighteenth day of March, A. D. 1887. Before me,

W. W. MCLELLAN,
Commissioner, etc.

DONALD MCAULAY sworn.

Ex. by Mr. BORDEN :

I reside at Englishtown, in C. B. My position there is sub-collector of customs. Have been acting as such for 10 or 11 years. I first saw the schooner on the 11th May, 1886. When I saw her she was about coming to anchor outside the light-house in St. Ann's bay. I could see her from my own house, and I saw her all that evening. I seized the vessel after that on the 17th May, 1886, and at that time she was in the harbor on the north side. I saw her every day between the Tuesday when I first saw her and the Monday when I seized her. I saw her on Wednesday going out, and I saw her on Thursday, Friday, Saturday, and Sunday. I did not see the captain or any of the crew between the 11th and the 17th of May. I heard people speaking about her on the Saturday before she was seized. I generally go on board of every vessel that comes in, and I went on board of this one on Monday. When I went on board I asked the captain to show me his papers, and he did so. I asked him why he did not report, and he said he did not think there was any need to report. I asked him if he did not buy bait, and he did not say whether he did or not. I then asked him to show me the bait that he had bought. He told one of the crew to go with me and show me the bait. We went to the bait, which was in the hold of the vessel put down in ice in a place built for it—a place which we call the kench. I looked at the bait and handled it. It was herring bait, and in a fresh condition, just as it came out of the nets. The fish were not opened. After that I went to the cabin and told the captain

Morrison, about in the lower end a rare thing to caught there. I general fishing. t, but they some five or six miles n at the time the on account of ice. the first of June. vessel was under We left the vessel n I was speaking vessel was pretty

G. McASKELL.
ax, this eighteenth

McLELLAN,
ommissioner, etc.

8th, 1887—2 p. m.

a, C. B. Saw the 11th of May, 1886; n's bay about a half ard of her on Tues- of her crew, and a n who represented hin face, dark skin, in height; can not hen he said that he cabin. He told me ed States signed by e two Governments y would not allow t the custom-house. t the fore-castle and ing bait there, and ere was danger, be- n about his duties, l be seized immedi- and that he would at any fish. There took place between there about three ably two or three vessel, and she hailed

that I thought it was very strange that he had not reported. Then he presented his permit, and said he had a right to touch and trade all around the bay, and to buy bait, or something like that. I am not sure as to the exact words. I then told him that I would have to seize his vessel. He did not say much about that, and I can not remember exactly what he did say. We then went on deck. Mr. Duncan McLeod, the preventive officer, went on board with me. I put what we call the broad "arrow" on her main-mast, after which I took the captain's papers and went on shore, leaving the vessel in the charge of the preventive officer, Mr. McLeod. I then telegraphed to Mr. Campbell, the collector in Baddeck, about the matter. I was on board of her again that day in the evening. I saw all the crew on board that time and Mr. McLeod was still there. I remained on board for an hour or two, and then I left Mr. McLeod and two other men, whose names I have forgotten, in charge of the vessel. The two men went on board that evening and I left them there. I saw Mr. Campbell, the collector, on the same day of the seizure, but he did not go on board. A day or two after the vessel was seized she was taken over to the other side of the harbor, and I was on board of her when she was taken across. Mr. McLeod, Dan. McKay, William Sellon, and Murdock McKitchie, were also on board at the time, and that is all whom I can recollect. We took her to the Englishtown side opposite to the custom-house. I had somebody in charge of her all the time up to the time when we took her across. After she was taken across I had men in charge of her working under my orders all the time she was in there. We stripped her the next day after taking her over. I had instructions from Mr. Campbell to strip her. She remained there until she was released, on or about the 28th June, 1886. I made copies of the documents which the captain handed to me—wrote them myself from the originals. I compared them with the originals. I state that papers "W. W. M. 2" are true copies. The captain and crew remained in the vessel until the following Sunday after she was seized, and they all left her on Sunday and some of them left on Saturday and left the place altogether. I saw the captain nearly every day after she was seized.

Cross-examined by Mr. MEAGHER:

Question. How far does your jurisdiction extend?

(Objected to by Mr. Borden.)

Answer. St. Ann's is supposed to be my port.

Question. If a vessel came inside of a line drawn across from Island point to Cowdy point, would she be obliged to enter?

(Objected to by Mr. Borden.)

Answer. I do not know.

Question. Would you consider that she would be within your jurisdiction?

(Objected to.)

Answer. I do not know.

Question. If a vessel came in from Boston and anchored inside the line drawn from Cowdy point to Island point and commenced to land goods without entering at the custom-house, what would you do?

Answer. I would act according to law and seize her. I think my jurisdiction extends to Monroe beach.

Question. What is the area of the port of St. Ann's in relation to the custom-house?

Answer. I do not know; it would extend over the whole of the bay and harbor of St. Ann's. I have been in the habit of exercising my

duties all over that bay and harbor. On the outside of the harbor the shore is settled on the south side, down as far as two or three miles, and on the north side it is settled as far as Cape Smokey. I know Mr. Morrison's place and it is settled below that as far as a mile at least. When I first saw the vessel I did not know that she was an American ship. I first heard that she was an American vessel on the day that she came in. I did not board her for nearly a week after that; and I did not send any messenger to her. American fishing vessels have gone into the bay and harbor of St. Ann's, and some have entered at the custom-house and some have not.

(Objected to by Mr. Borden.)

During the last 11 years those that did not report were in the majority. I seized this vessel on the charge that she did not report and that she had bought bait; she was seized on both charges.

Question. What did you say in your telegram to Mr. Campbell?

(Objected to by Mr. Borden.)

Answer. I forget the words, but the substance was that she was seized. I think I said that I had seized the vessel for buying bait, but I am not sure.

Question. How many vessels had you seized before in your district?

Answer. This was the second American vessel. The first one was a trading vessel seized some years ago, but she was allowed to go immediately afterwards. This was the first fishing vessel that I had ever seized.

Question. When did you first receive instructions to seize American fishing vessels that come into the bay and harbor of St. Ann's without reporting at the custom-house?

(Objected to by Mr. Borden.)

Answer. I decline to answer that question, because I am not bound to answer it. I acted on instructions received all along.

Question. Did you receive any instructions during the year 1886 to seize American fishing vessels coming into the bay or harbor and not reporting?

(Mr. Borden here interposes and asks the witness whether the instructions which he received were in writing, and the witness states that all his instructions were in print.)

Mr. Borden now objects to Mr. Meagher's question on the ground that it involves the contents of a written document.)

Answer. I do not recollect whether I did or not.

Question. Will you swear that you did not?

Answer. I do not recollect. I do not think I received any instructions about seizing American vessels any more than any other vessels.

Question. Did you have any instructions in May, 1886, to seize American fishing vessels for not reporting?

(All this is objected to by Mr. Borden.)

Answer. I do not think I had.

Question. How is it that you seized this vessel for not reporting and you did not seize other American vessels which came in there during the previous 11 years and which did not report?

Answer. I seized her for trading and not reporting because I thought that she was the first vessel that had made a breach of the law in not reporting. I know that during the last eleven years American vessels came in there and did not report and I did not seize them. Previous to this they had the privilege of going in and out. Since the expiration of the treaty I have not received any instructions with reference to seizing American vessels for not reporting. The first person who told

me that the vessel bought bait was the captain himself, and I had no information about her previous to my boarding her.

Question. Were you told that she had bought bait before you boarded her?

Answer. I heard the boys speaking about it, but that is all the information I had about the matter. I saw her every day between Tuesday and the day I seized her; she was a mile, more or less, away from me. I saw her when she went out and again when she was in the harbor. In the harbor she would be between a half and three-quarters of a mile from me. I could not swear that it was the same vessel, but I believed that she was the same that I had seen there from day to day. I do not recollect whether the captain told me that he did not know whether there was a custom-house there or not. My memory is not very distinct about the conversation. Duncan McLeod is an uncle of the witness Angus McLeod. It makes no difference to me how this matter ends. John McLeod compared the papers "W. W. M. 2" with me. I had the originals and he had these. I do not recollect who did the reading, he or I. Between the end of October and the first of June American vessels come into St. Ann's bay and harbor. In the month of July they come in most frequently, and it is quite a common thing to see them there every week. Then I have known other American vessels to go in there, buy bait and go out again without reporting; but that was not in 1886. This vessel was my first attempt to stop that practice.

Question. That was because of some instructions given to you?

Answer. I acted according to the law placed in my hands from time to time. I believe American vessels came in during the summer and autumn of 1885 and bought bait and went out again without reporting. Capt. Doughty showed me his permit and said that he had a perfect right to touch and trade, but he did not say anything about not reporting. I think he did say that he thought there was no need to report. I think that was the answer he gave to me when I asked him why he did not report. I sent Mr. Campbell a written report the same day that I sent him the telegram. I gave it to the postman myself, and it was addressed to Mr. Campbell at Baddeck.

Question. What did that report state as the ground on which you seized this vessel?

(Objected to by Mr. Borden.)

Answer. I can not say what that letter contained, as it was written 10 months ago. I can not say whether that report stated it was for buying bait or not reporting, or for both, or neither. There are a few people down in our neighborhood who speak English. I have heard Donald McInnes speaking English in conversation, but I would not undertake to say that he understands conversation carried on in English. I answered a telegram which I received from McKenze Bowell in reference to this seizure.

Question. What reply did you make to that?

(Objected by Mr. Borden.)

Answer. My answer was that I had evidence that she bought bait and that she did not report. I sent that telegram on Wednesday. I had sworn evidence, and I obtained it from D. J. Morrison and Daniel McAskill that same day. I got the evidence because the captain had told me that they were the men who had sold him the bait. I was not talking to the people about her buying bait, but I heard others talking about it in Mr. McLeod's store. I can not recollect who all were in the store, but I think Mr. D. McAskill and the postman was there. I am

not sure about that. I did not talk with McAskill before I seized the vessel. I got the sworn statement from him on Wednesday. I think I saw the sworn statement since I came here to Halifax. I expect it was read over to those men who came here to give evidence.

Question. Was it because of any instruction received by you within a year before the seizure that you seized that vessel?

(Objected to by Mr. Borden.)

Answer. No, it was not.

Question. Why did you not seize other vessels before this time.

Answer. Because under the treaty they had the privilege of coming in without reporting whether they bought bait or not.

DONALD MCAULAY.

Signed and sworn at Halifax, in the county of Halifax, this 18th day of March, A. D. 1887, before me.

W. W. McLELLAN,
Commissioner, etc.

Adjourned *sine die*.

(Indorsed :) Queen v. Doughty.
Copy of evidence.

N. H. MEAGHER, Esq.,
Q. C.

THURSDAY, June 2nd, 1887.

Defense. Resumed before his lordship Mr. Justice McDonald.

Captain WARREN A. DOUGHTY, sworn.

Am thirty-seven years of age. Occupation, fishing. Have been engaged in fishing business twenty-three or twenty-four years. Have held position of master of fishing vessels for about thirteen years. Have engaged in cod and halibut fishing principally; fitting out at Portland, Maine. During 1886 I was in command of the *Ella M. Doughty*, of Portland. One of the voyages of last year she was seized at St. Ann's. On that voyage we left Portland on the 26th of April on a halibut-fishing trip to the Western banks. The Western banks are about eighty or ninety miles from Nova Scotia proper, and about twenty-four miles from Sable island. We fitted out entirely with trawls, and had no hand-lines on board. Outside of our fishing supplies we had no cargo on board. Have been engaged in halibut fishing, trawling on the banks, about three years. The first place we anchored was on the Western banks. We anchored only once at that time, and about twenty-four miles from Sable island. On the Saturday following the day we left we anchored on the banks. We set our trawls. Up to the time we were seized we had set our trawls twice. We set them the second time at the same place and on the same day. We took very few fish with the trawls. We remained on the Western banks only that Saturday. At the time we were seized we had halibut, cod, cusk, and hake, and they were caught on the Western banks. Between the Saturday and the time of the seizure we had done nothing in the way of fishing. The trawls were set close by where the ship was anchored. We left the Western banks the same Saturday that we set our trawls. That was the first day of May. On that day we left for fishing, north. We were going to St. Paul banks; we had never been on the St. Paul banks before, but there was a man, Mr. Lawrence, who had been there before who was on board with us. After leaving Western banks on first of May, we next touched

at Louisburg on Monday. We went in there on account of the ice which forced us in, and remained there till the following Thursday. We were compelled to remain there that long on account of the ice. We then started for St. Paul banks; we didn't get there because we were forced into North Sydney by the ice. We got into North Sydney on the following Friday, and remained there until Monday morning; we did not leave in the meantime because we could not on account of weather and ice. We left on Monday morning for St. Paul banks. Arrived at Bear head that night—that is to the north of Ingonish—we anchored there that night and laid there until next morning; the wind was blowing heavy and there was ice outside of us. The ice was two or three miles from us and heavy. The wind was northwest off-shore that night and blowing heavy. We left Bear head Tuesday morning for St. Paul banks. We went as far as we could, but the wind changed to the northeast, pressing the ice in shore and forced us back again; we then went into St. Ann's.

Question. What is the reason you went into St. Ann's.

(Objected to by Mr. Graham.)

Answer. On account of the ice we could not get along. We got in there Tuesday about noon; I don't remember the day of the month. We anchored outside of the harbor light. Next morning the weather was clear and the wind southwest, and we attempted to leave there. We got about seven or eight miles on our way to the Banks that day, when, on account of the ice, we had to put back; then we went up into the harbor of St. Ann's. It was raining when we got back and the wind canted out. We next left there on Thursday morning early for St. Paul banks. We got as far as Bird island on that occasion. We went as far as we could get for the ice; then the wind died away and we layed there. The ice was heavy. We remained there till nearly night when a breeze sprang up from about east-northeast; we then ran back into the harbor and arrived there just before night. Next morning there was ice in the harbor—coming in all the time. In consequence of the ice we had to shift over to the northern side of the harbor. We did not attempt to go out between that time and the time we were seized, because we could not get out for the ice. A voyage of that kind usually lasts three or four weeks. We usually remain on the Banks trawling about two weeks. On these trawling voyages we use herring, mackerel, and other kinds of fish for bait. We took herring for bait on that voyage, about ten thousand in quantity. From five to fifteen or twenty barrels would be sufficient for an ordinary voyage of that kind. They were frozen herring. We also use fish for bait that we catch on the trawls. While I was at St. Ann's I made no effort to enquire for or obtain bait, and I did not send any one to make any enquiries for bait. On Wednesday morning a boat came alongside. There was one man only in the boat. He had herring and asked me if I wanted to buy any. I did not know any person down there and I did not know the names of any person from whom I bought bait. When he asked me if I wanted to buy any bait I told him I did not know as I did. After that I asked him what he wanted for his bait. I went into the hold to look at my bait and to see how it was, when I found that it was getting soft; when bait gets soft the fish will not take it. I told him I would take his bait. Do not remember what further conversation I had with him. The bait was taken on board from the starboard side. He first came to the port side. He went to the starboard side, because it was most convenient to get the bait in on that side, as none of the dories were on that side. While at St. Ann's I bought ten or twelve barrels

of bait on Wednesday and Thursday. The day that the man came on board, and the day following, I bought the bait from different parties. Before getting under way on Thursday morning I had not bought any bait. When the boat first came to us that morning we were going out through the harbor into the bay. The boats made fast to me. I did not take the bait from them as soon as they came alongside, because as I told them, I had no money to buy bait and I could not pay them what they asked. I afterwards bought the bait and I got the money from the crew. The boats continued with me before I took the bait for about a half mile from the entrance to the harbor. The harbor is settled on both sides.

Question. Did you give any reason to any person at that time why you did not take the bait then?

Answer. No. From the time we started on that occasion when they made fast to us, we were obliged to tack across to the eastern side of the bay going out. We left them off of our vessel while we were on the tack. They went on shore on the southeast side of the bay.

Question. Some of the witnesses said that you gave them fresh halibut. Where were they caught?

Answer. On the Western banks. I remember another vessel being in the bay while we were there. The captain came on board and I had a conversation with him.

Question. A witness has stated (Angus McLeod, line 657), "he called me down in the fore-castle and asked me if I thought there was any danger in buying bait there and if there was any bait to be got. I told him that there was danger, because the officer on shore was a very particular man about his duties, and that if he was found buying bait there he would be seized immediately"; did that conversation take place between you?

Answer. No. I took him in the fore-castle in showing him around the vessel. I do not remember who was present. I remember Mr. McAulay coming on board and seizing the vessel.

Question. He states that you gave him the name of the man from whom you bought the bait; is that correct?

Answer. No. I did not know the name of a man there. The bait that I bought there was put under ice on the same morning that it was bought.

Question. Where were you going to use the bait that you bought in the bay and harbor of St. Ann's?

(Objected to by Mr. Graham.)

Answer. On St. Paul's banks. Nothing was done in prosecuting the voyage while in the bay and harbor of St. Ann's further than buying the bait and putting it on ice. Neither was anything done at Louisburg, Sydney, Bird island, or Bear head. From the time that we put the fish on the ice until the seizure of the vessel nothing had been done in the way of curing or preserving the fish. Halibut that had been cleaned and put on ice would keep fresh about three weeks. Putting fresh fish on ice will not cure them, but will preserve them for a time. We preserved halibut by breaking up the ice after catching the fish and putting the ice around them. We break up the ice after the fish is caught and cleaned and ready to go into the ice pen. It is not usual to break ice before the fish is caught. I got paper J. M. D. 1 at North Sydney on Saturday (tendered by Mr. Meagher, and its reception objected to by Mr. Graham on the grounds of irrelevancy). I received paper J. M. D. 2 from the custom-house at Portland, Maine. It is signed by Samuel J. Anderson, collector of customs there; I saw

him sign it. I never entered and cleared from that port at any time. I do not know any man in the custom-house at Portland. I had that paper with me on the voyage.

Cross examined by Mr. GRAHAM:

I am one of the owners of the *Ella M. Doughty*; Horace M. Sargent, Alphues G. Starling, Timothy B. Percy, Edward J. Skillam, James A. Conley, J. & J. Fowler, Thomas Laughlin & Sons, Merrill Place, Luke V. Whalen, J. W. Treflther, W. T. Studley, Edward S. Fernald, Symond Curtiss, Edward Cobb, Benjamin F. Griffin, and Isaac Doughty are also part owners. I was sailing as master of the *Ella M. Doughty* for three years. She was built and fitted out for herring and halibut fishing. I had been about thirteen years previously master of fishing vessels. During that period I had never entered or cleared at a custom-house but once. I never had a paper like J. M. D. 2 before. Never had a permit to touch and trade before. Had been into port frequently before this buying bait and supplies on fishing voyages, and without any permit; it was never required of me. Never was in the frozen-herring trade on the coast of Newfoundland. Have sailed as a fisherman about twenty-four years inclusive of the time I was master. Paper J. M. D. 2 was the first permit I ever saw. My crew on this voyage numbered fourteen all told. Part of them are sailing out of the New England States, making short voyages, and would be at Portland or some New England port every three or four weeks or so. We do not keep any log on board these vessels. We were fishing on shares, and the men were not paid wages. We have no officers every man is as good as an officer. Fishing vessels are fitted up in the hold in different ways for different kinds of fishing. They have bins for ice and ballast decked down. The *Ella M. Doughty* has been employed in fishing ever since she was built. She was built at Kennebunk Port in Maine. I have fished at La Have, Banquero, Grand bank, and Sambro bank. I was never on the Georges. I had never been on the St. Paul's before, and none of my crew except one man, as far as I know. At the time of the seizure we had on board five or six hundred pounds of halibut and ten or twelve hundred lb. cusk and hake. We were not codfishing as well as halibut fishing, we iced the codfish. On voyages we never renewed ice on the fish, only when it melts on the top, then we put on more ice. When she was seized I do not know how much ice we had on board. It is the duty of one of the men to attend to the icing of the fish. We iced the herring, that is, we broke up the ice and put on a layer of ice and then a layer of herring. Halibut is equally divided among men, but the cod is divided according to what each man catches. The Banks of Quero were the nearest to where we first fished, and about forty-five miles away, and where we first fished is three or four hundred miles from the Georges. We did not have good luck on the Western banks that trip. The previous trip we were at the same place.

Question. While at Baddeck did you tell any one that if you did not succeed in getting returns after you had set your trawls you would go to Cape North?

Answer. I am not positive, but I may said that. I have conversed with the newspaper men down there, but not with more than one man that I know of. I do not know the name of the man I talked with. After we got under way at the Western banks I could not tell you what course I sailed. It was different courses. The ice was inshore of us and we were standing on for land; that would be the northward of us. It was a field of drift ice. I can not give you the bearing of the ice from

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us, and it would not have prevented us from going to any of the other banks. I don't remember the conversation that took place between myself and the captain of the *Lady Franklin*. I did not go to visit the grave of the great Angus McAskill. When the first man came on board and I examined my bait I knew that we wanted a complete supply, and I didn't know any other means of getting it than from the man along-side. I required from eight to twelve to fifteen barrels. I could not say how much exactly I bought. The first man came on board in the morning of Tuesday and the captain of the *Lady Franklin* came on board on Tuesday in the afternoon. I recollect the name of his vessel was the *Lady Franklin*. When we left home our herring was frozen and we put them in the ice-house without any ice on them. They were what is called frozen herring. If I had not got any fish at St. Paul's banks I do not know whether I would have gone home or not. We would probably have tried some other place. When I state that the bait was to be used at St. Paul's banks I mean that it was to be used there or any other bank that we should go to outside of the three-mile limit. I knew about the three-mile limit law, and I heard about it that spring. The bait could be used on the Western banks or Quero as well as at St. Paul's banks or any other bank.

HENRY R. LAWRENCE SWORD.

Examined by Mr. MEAGHER:

Am forty-one years of age. Been engaged mostly in fishing business. Have been master of coasting vessels. I was in the *Ella M. Doughty* on the trip when she left Portland in April, last year. I was a navigator on board. She left Portland the twenty-sixth of April on a halibut trip to the Western banks. She was fitted out for trawling for halibut. When trawling for halibut we often catch other kinds of fish. The other fish caught we use for bait. Never knew any of them being brought home. I have been about five years in the trawling business, making six or seven trips a year. We had nothing but trawls on board. We had no hand-lines. We proceeded to the Western banks and arrived there the following Saturday, early in the morning, set our trawls twice that day and got a few fish, but we found them very scarce. We left there the same night for St. Paul's banks. I had been on the St. Paul's banks on one trip before. When we left the Western banks we were bound for the St. Paul's banks. On the previous season we found fair fishing. The captain had charge of the vessel and I assisted him. The wind was to the eastward that night and the next day. We stood north and fetched into Louisburg on the Tuesday morning after we left the banks. We happened to go in because on Saturday night we fell in with ice. All the next day the ice kept increasing. We tacked off and found more ice outside; it looked stormy, and we stood in towards Louisburg, and in trying to get in we nearly lost the vessel on account of the ice crowding us inshore. On Thursday we left there for St. Paul's banks; got abreast of Sydney when the wind changed to the eastward and the ice crowded us inshore, and we were obliged to go into Sydney, where we remained until Monday morning. Sunday it was stormy. On Monday it cleared off and we proceeded to St. Paul's banks. We got to a place called Bear head that night. Ice was within two miles of the shore and the wind blowing very heavily, and we remained there over night. In the morning we got under way, but the

wind changed to the northeast and we were obliged, on account of ice, to go into St. Ann's bay. Arrived there on Tuesday. Tried to go out twice, but ice and headwinds forced us back. The last attempt we made was Thursday. The weather very stormy, and it was impossible for us to get out. A steamer could not go out. There was ice and bad weather between that time and the time we were seized. I did not go on shore until the vessel was seized. The captain went on shore on Sunday on Smith's mountains. I did not do anything there in the way of inquiring for or purchasing bait. At the time the vessel was seized we had some halibut and fresh fish which were caught on the Western banks, and they were not caught anywhere else. We did not set our trawls on that voyage anywhere except on the Western banks. In St. Ann's I remember a man coming on board from a vessel that came in the same day we did. The captain came along to the fore-castle with him. They were looking at the vessel to see how she was constructed. I was in the fore-castle all the time they were there, and I heard nothing but remarks about the vessel. We were about twenty-four or twenty-five miles from Sable island when we were fishing on the banks. The fish we caught on the Western banks were cleaned and put in the hold on ice on the same day that they were caught. From that time until the vessel was seized nothing was done with them except to give away one or two to the men at St. Ann's.

Cross examined by Mr. GRAHAM:

I was not receiving pay for navigating this vessel. I was not a navigator on this vessel and there was no difference between me and any of the crew. I had never been in any other place in Cape Breton before but Louisburg. The fishermen on board this vessel were mostly American citizens. I did not know any more than one man who belonged down there except a Frenchman who belonged to Arichat, but I think there were others of the crew who were formerly Nova Scotians before they became American citizens. I had never been master of a fishing vessel but I had sailed in fishing vessels before. In fishing vessels we usually put in for supplies of bait while on the voyage. I have fished on La Have bank, Sambro bank, and the Western bank. We did not have good luck this trip. Ships fit out for codfish and halibut; halibut gear is larger than that used for codfish, but codfish are caught with halibut trawls. They don't fit out vessels with halibut trawls so that they can catch both halibut and codfish, but we catch a number of codfish on halibut gear. The vessels that come in with codfish and halibut are always fitted out with two sets of gear, one for halibut and one for codfish. When we first saw ice after leaving the Western bank it was to the eastward of us, quite close to us, but the bulk of it was three or four miles away.

HORACE M. SARGENT sworn.

Examined by Mr. MEAGHER:

I reside at Falmouth, near Portland, and am one of the owners of the *Ella M. Doughty*. I know Samuel J. Anderson, the collector of customs at Portland; he has filled that position for about two years. I have seen his signature several times. I should say that the signature on paper J. M. D. 2 is his and the seal is that of the custom-house at Portland. I have frequently received papers from the custom-house there.

(Paper tendered and received subject to objections by Mr. Graham.)

Cross-examined by Mr. GRAHAM:

I own other fishing vessels. I have owned vessels engaged in the frozen herring trade, and have engaged in that trade in Eastport and Grand Manan. It used to consist in buying and catching both. We took out permit to touch and trade since this fishery trouble, and we used to take out a permit for trading before the Washington treaty, but not during the Washington treaty. Subsequently to the cessation of the Washington treaty we began to take them out. Our vessels were fishing during the Washington treaty.

IN THE VICE ADMIRALTY COURT AT HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL ELLA M. DOUGHTY } No. 472.
 and her cargo.

ACTION FOR FORFEITURE.

I, Wilson W. McLellan, of the city and county of Halifax, in the province of Nova Scotia and Dominion of Canada, commissioner and stenographer, hereby certify that in pursuance of an order of this honorable court dated the 5th day of March, A. D. 1887, appointing me a special commissioner for that purpose, I administered an oath to and proceeded with the examination of the witnesses who were produced before me at Halifax on the days and at the times in the foregoing 39 pages mentioned, and in the presence of counsel for both parties.

That pages 40 to 55, both inclusive, contain the testimony of the respective witnesses therein named, taken before his lordship Chief Justice McDonald, the judge of this honorable court.

That the testimony of said witnesses was taken by me in short-hand, and afterwards transcribed into long-hand, and said 55 pages include all the evidence so taken and are correct.

That I have carefully compared the foregoing 55 pages with the originals on file in the office of the registrar of this honorable court and that the same are true and correct copies thereof.

W. W. McLELLAN,
 Commissioner, etc.

IN THE VICE-ADMIRALTY COURT AT HALIFAX.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL DAVID J. ADAMS } No. 472.
 and her cargo.

Examination of witnesses in this action had before me, Wilson W. McLellan, a commissioner of the supreme court of Nova Scotia, specially appointed for that purpose by an order of this honorable court dated September fifteenth, A. D. 1886, this sixteenth day of September, A. D. 1886, at the supreme court-house at Halifax, Wallace Graham, Q. C., and Robert L. Borden, esquire, solicitors on behalf of the attorney-

general of Canada, and N. H. Meagher, Q. C., solicitor for the defendant, being present.

JAMES B. HILL sworn.

Examined by Mr. GRAHAM:

I am chief officer of the *Lansdowne*. I joined the steamer twenty-eighth of June, 1885. Since the fifteenth of March we have been protecting the fisheries. Know the schooner *David J. Adams*; first saw her in the month of May, 1886; she was then in Annapolis basin. We arrived in Digby from Saint John on the sixth of May in the *Lansdowne*. We were ordered by Captain Scott to board all the vessels we could find in the harbor, which we did. We were looking for American schooners. We boarded all vessels whose lights were in sight. It was my watch from four to eight in the morning. Shortly after I came on deck a boat came alongside and gave us some information. A schooner with a broken topmast was pointed out to me by the person in the boat. She was lying near Bear island at anchor. She proved to be the American schooner *David J. Adams*, from Gloucester. I could not say how long she was there. I took the boat to go aboard of her, and she immediately got under way. Our steamer was lying close to the Digby pier, and the schooner was about two miles from us. Four hands went in the boat with me. We rowed to cut her off a little by the bow. When we got alongside of her I asked him where he hailed from, and he answered from Gloucester. I asked him also what he was in for. He said to see his people. I asked him the name of his vessel, and he replied, *David J. Adams*; and her owner, Jesse Lewis, and the master's name was A. Kinney. I asked him how many tons. He said sixty-six, and her port of registry was Gloucester. I asked him also if he had any bait on board. He replied that he had not. I told him that he had no business in there.

Question. Why did you ask him about the bait?

Answer. We supposed that he had been there for bait, preparing for fishing, and it was in consequence of information that I received that I asked him about it. I told him I supposed he knew the law, and he answered yes. He was ordered to proceed beyond the limits, and I returned to the *Lansdowne* about six o'clock. We remained there about four hours. Captain Dakin was on shore after breakfast. Captain Dakin ordered us to weigh anchor, and we then proceeded down towards Digby gut, where the schooner was. The schooner was trying to get out. She stood across towards Digby shore, and tacked again, working her way out of the gut. We overtook her about Victoria beach. I was ordered by Captain Scott to board her and examine her thoroughly. I took a boat's crew of four men with me, including Fred Allan, the boat's coxswain. Our boats are white. We went alongside the schooner, and I told the captain that it was reported that he had bought bait. He replied to "bring the man here who told you and I will call him a liar." I went on board with Allan and told the captain that I was going to search, and he replied all right. One of our men and one of his men took up the main hatch. I ordered Allan down to search for the ice-chest. We found it, and passed up bait out of the hold which I think was perfectly fresh. A herring was handed to me by Allan. I told the captain I thought it was perfectly fresh and asked him how old it was, and he said it was ten days old. I then said that I would have to report to Captain Scott. I have had experience in my younger days about handling fish. I examined the bait, and saw the ice-house was pretty near full of bait and ice together. My opinion is

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that the fish was not out of the water over two days. I saw lots of ice and halibut. There were six or eight cakes of ice on the starboard side, and looked as if it had just been taken from the sawdust. The blocks of ice would be about two feet long and eighteen inches wide. The bait was large Digby herring. We came back to the *Lansdowne* and reported to Captain Scott. The next order was to return to the schooner, and Captain Dakin was ordered in the boat with me. We returned to the schooner with Captain Dakin and the same men who were with me before. Captain Dakin, myself, and Fred Allan boarded the schooner on this occasion. The schooner had been trying to work out the gut all this time. The wind was light, with a head tide. Allan and Captain Dakin both went down the hold to examine the bait. Captain Dakin picked out one of the fish, and I heard him give his opinion to the captain that it was perfectly fresh. No orders were given to the schooner at that time. We all returned to the *Lansdowne*, and Captain Dakin communicated with Captain Scott. I was then ordered to take the schooner into Digby and anchor close to the *Lansdowne*. The *Lansdowne* anchored at the pier, and the schooner anchored close alongside. I was in the boat in tow of the schooner on her way up to Digby. I told the captain after we anchored that he would have to remain there until after an investigation was held. The next order I got was to get the boat ready. I got the men in the boat, and Captain Scott got in, too, and told me to proceed to Victoria beach. We did so. Captain Scott and the fishery officer went on ashore and found a man by the name of Ellis. Shortly after that Captain Scott came back to the boat, and we went on board the *Lansdowne*. Then Captain Scott, Captain Dakin, myself, and the men went in the boat to the schooner *David J. Adams*. Captain Scott, Captain Dakin, and I went on board the schooner at this time. Captain Scott read some document to the captain of the schooner, and pronounced the *David J. Adams* seized. Then there was a guard of four men and second officer of the *Lansdowne* placed on board the schooner. Next morning (Saturday) at four thirty her men were transferred to the *Lansdowne*. I and four men were left in charge of her, and we towed her to Saint John. We returned to Digby Sunday night. We sailed her back to Digby gut, and the *Lansdowne* towed us to Digby, and anchored there, myself and one man being left in charge of her. The schooner was schooner rigged, with two jibs, main-topmast broken just above the cap. I saw her name on on her stern; I saw "*David J. Adams, Gloucester*." She had about eight barrels of bait on board; that is, from the appearance of the pile of ice and bait together.

Cross-examined by Mr. MEAGHER:

Have been sailing in Government employ since twenty-eighth of last June; before that I followed a sea-faring business in sailing ships mostly, in freighting vessels to New York and the old country. I never had any experience in fishing vessels. I have attended boats and bought shad and salmon from them on the shores of Cooquid bay. I followed that up for three years. That is all the experience I have had in the fishing business. Bear island lies near the Annapolis shore; it is about two and one-half miles from the public pier at Digby. When we first noticed the schooner the *Lansdowne* was lying off the Digby pier, and the schooner was lying at anchor above Bear island. I could not exactly say whether it was above or below the island, but I think she was above, it and four or five schooner lengths from the shore, lying towards Granville. It was about four thirty o'clock in the morning when I went

out in the boat to go to the schooner. It looked as if the schooner had got under way when she saw me leaving the ship; her sails went up together. We had four oars in our boat. She was two and a half miles from us. I could not say how far we had gone when she got headway on. We were about two miles away from her when she started. I did not go on board of her that time. I was alongside of her nearly fifteen minutes. She was under way then. I was holding on to her with a boat-hook. The captain was on deck; some of the sailors were there, too. The captain was in the after part of the ship. We intercepted her when she was about half way across the basin. The wind was in. I do not know what way the wind is when it is in. I was in Digby twice before that and once since. I remained there until the end of the following week after this event took place. I was there five days after coming back from Saint John. It was about six o'clock when I returned to the *Lansdowne* the first time we went to the schooner. It was about two miles from the place where we left her to the place where the *Lansdowne* was. We pulled to the southward and westward to get back to the *Lansdowne*. The wind remained the same all day. The schooner could not stand out, but had to beat. She was on her way out when we first went alongside of her, and she continued on her way out till I boarded her about ten, ten thirty, or eleven o'clock. That was the second time, and she was off Victoria beach. She would be entering Digby gut viewed from the pier, and four or five miles from the pier.

Question. As much as that?

Answer. Three or four miles, or something like that; I could see her all the time during the morning; I was watching her; I could not see what tacks she made; as far as I could see she kept under way from the time we first saw her up to the time we boarded her the second time. When we went on board the second time we did not order her to heave to, as it was not necessary, there not being much wind. She did not anchor before we left her, and we left her going on just as before, when we went back to the steamer. I did not give the captain of the schooner the name of the man who had reported that he had bought bait. I looked up the herring's gills and saw it was perfectly fresh. I do not remember whether I went down the hold that time or not. The first time I went on deck I saw about eight barrels of herring, as far as my judgment goes. There was only one fish handed up to me. I banded the fish that was handed up to me. I was in Digby before this occasion; was there in July, 1885; I think we were there in April last for a short time. I did not handle or see any fish at that time. I have never seen any fish caught to any extent at Digby; I have seen dories pass the steamer with fish in them. I did not see the vessel at any other place in the basin up to the time we brought her up. After we boarded her the second time we came back to the steamer; it was fifteen or twenty minutes; when I went back to the schooner again she had drifted a little further into the basin, that is, she was losing ground. The steamer was close to the schooner when I left to go back to the schooner. The light-house is outside of that. The schooner at the time we boarded her the third time, I should judge, would be two or four miles from the light-house. The *Lansdowne's* boat was fastened to the schooner, and she towed it back to the vicinity of the pier under a fair wind. We were at the strait side of the pier. There was good sea room between the *Lansdowne* and the pier. The schooner was three or four ship-lengths from the outside of the pier. When I saw the ice-house it was full of ice and mixed with fish; it was two-thirds full, and looked like a bulk-head; it lies between the two hatches. I was down the hold

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several times; there were from two to four feet from the top of the fish and ice to the top of the ice-house. On the port side going out she would be about three-quarters of a mile from the land, and on the starboard side she would be pretty well over to the Annapolis shore. The captain and the crew were ordered on board the *Lansdowne*, excepting three men, about five o'clock on Saturday morning of the eighth of May. The three men left her the sameday, about noon, after we got into Saint John; they took their effects on shore from the vessel on Sunday in Saint John. The crew of the schooner came back to Digby; none of them went on board of the schooner again. When we left Digby I do not know where they went. If this vessel is condemned I do not know what the result will be for me.

Question. Don't you expect to get part of the proceeds of this vessel if she is condemned?

Answer. I could not tell you; I have no opinion.

Question. Do you expect anything?

Answer. I expect my wages while I am in Government employ; if it is customary, I expect to get it; I suppose I consider myself one of the captors or one of the prize men.

Question. You said you told the captain that he had no business there?

Answer. Yes.

Question. What answer did he make?

Answer. He made no answer to that; I said, you have no business here, and I suppose you know the law; and he said yes. The schooner is painted black; I think there is a white streak around her. I do not remember whether her name was on her bow or not.

JAMES B. HILL.

Signed, deposed, and sworn at Halifax, in the county of Halifax, this 16th day of September, A. D. 1888, before me.

W. W. McLELLAN,
Commissioner.

CHARLES T. DAKIN sworn.

Examined by Mr. BORDEN:

Am captain of the *Lansdowne*; have been on her since last June twelve month. Remember arriving in Digby in May last from Saint John; we got to Digby about eleven-thirty at night, on the sixth of May. Two boats were sent on board some vessels to see whether they were Americans; we did not find any American vessels that evening. I saw one the next morning; she afterwards proved to be the *David J. Adams*. She was a schooner with the main-topmast broken just above the cap; she had no other topmast. I first saw her about eight o'clock in the morning. I remember the first officer, Hill, coming back from the schooner. After he came back I went on shore to make enquiries about reports, and I got some information. We got under steam and proceeded down to the gut, where the vessel was, and while down there Hill boarded the schooner the second time. I went on board with Chief Officer Hill and four men, the same crew that were on board of her before. I went on board with a man by the name of Allan; I don't re-

member whether Hill went on or not. I asked for the captain, and I said to him, it is reported that you bought four barrels of herring yesterday; is that correct? and he said, I don't think that is true. I told him that one Ellis sold him four barrels of bait yesterday. I ordered the hatches to be taken off and the apartment that the bait was in opened, and some of the bait brought up; I examined it. The bait was in a large bin, with a door and a cross-bar; there were fish and ice in it; examined the fish in the bin and examined some of it on deck also; it was herring, and perfectly fresh; I should think that the fish had been out of the water a very few hours. I have had experience in handling fish; the gills were perfectly red and eyes bright. After they are dead awhile their eyes begin to turn red; I should judge there must have been eight or nine barrels of herring in the bin. I remarked that the bait was fresh, and I left and went on board the *Lansdowne* and reported to Captain Scott. The first officer and men were ordered back to take the vessel and anchor her. They went back to the vessel, and she went up to anchor; we steamed up after her. I then went on shore to ask the collector and the fishery officer to come on board the steamer, as Captain Scott wanted to confer with them. Captain Scott took the collector and fishery officer and went down to the weir at the entrance of the Gut where the bait was bought; it is called Victoria Beach. I did not go down with them; they were probably three hours away. When they came back Captain Scott took me and chief officer and four men and went on board the *David J. Adams*, and he read over papers and acts and seized the vessel. I was captain of the *Lansdowne* at that time, and Captain Scott was, as I suppose, commander of the whole fleet. I was born at Digby. The second officer and four men were placed on board the schooner as guard. The next morning about four o'clock we left for Saint John. We took the captain and a number of the crew on board the *Lansdowne*, and took the schooner to Saint John. The next day about noon we left Saint John and brought her back to Digby. Her crew had the offer to come back, but they declined. When we brought her back to Digby we put her in the Racket, and the next day the collector of customs took charge of her. When I first saw her she was down in the Gut. In the vicinity of Digby Gut within a distance of one mile or less of the shore there is good fishing grounds. Digby gut is said to be a mile wide, and it is the only outlet of the Annapolis basin to the sea. There would be good codfishing about April, May, and June in the vicinity of Digby gut. There is some little halibut fishing there, but they are not very plenty. I did not see any halibut on board the *David J. Adams*. The bait was herring; herring is used as bait principally for codfish, haddock, and hake.

Cross-examined by Mr. MEAGHER:

Have been going to sea about twenty years, mostly in square-rigged vessels; I never fished in any fishing vessels; I fished in boats about thirty years ago at Briar Island. I belong to Digby, having lived there about eight years. There are vessels fitted out in Digby town for the fishing grounds referred to by me; they fit out for the Bay of Fundy fishing; they carry it on off the gut. They fit out to catch codfish and halibut. I cannot give you the name of any vessel that is used exclusively for codfish or halibut. They fit out very early in the season for halibut, sometimes in March, and they follow that up until the season is over, probably the last of May. They catch halibut sometimes within a couple of miles from the shore and sometimes six miles from the shore.

captain, and I herring yesterday. I told him I ordered the bait was in the bait was fish and ice in it; he also; it was fish had been out in handling fish; are dead awhile have been eight the bait was fresh, I told to Captain take the vessel she went up to me to ask the collector, as Captain took the collector entrance of the beach. I did not say. When they men and went and acts and at that time, and sole fleet. I was placed on board at 1 o'clock we left for the crew on board the next day about 7. Her crew had brought her back a collector of customs down in the Gut. mile or less of the to be a mile wide, sea. There would vicinity of Digby they are not very J. Adams. The for codfish, had-

in square-rigged and in boats about having lived there Digby town for the Bay of Fundy catch codfish and that is used exclusively in the season for until the season sometimes within from the shore.

I have never seen them caught there, but I have seen them after they were brought in and reported as being caught; I was told where they were caught, but they might have been caught anywhere else for anything I know. During the last eight years I have never seen any halibut caught in the vicinity of Digby, nor have I ever been interested in any vessel fitted out to catch halibut in that vicinity; I only know from being told where they were fitting out for; the whole fleet fits out every spring exclusively for halibut. I never saw any vessels catch halibut, and all I know is from reports that they are caught in such and such a place. When I was a boy I handled a great many herring. I was engaged in the business for several years, probably when fifteen to twenty years of age. We did not use any ice in those days. I have not had much experience in using ice in connection with fish; the only experience I have had was to put a few herring in ice to keep for a day or so. I will not undertake to say what effect ice has upon herring. I opened the door of the bin of the schooner; I could not tell what was underneath. When I say that there were eight barrels there it is only a rough guess; I assumed that the rest of the bin was the same as the top, and it was on that assumption that I said that there were eight barrels there. The *David J. Adams* was near Victoria Beach when I boarded her, that is probably three miles from Digby pier. She would be northeast from the pier. She was about the centre of the lower end of the basin; she had not got out so far as the beginning of the entrance; she would be not more than half a mile from either shore. I have sailed as master into Digby before I went on this vessel. At the time we boarded her she was in the port of Digby. I have entered at the customs at Bear River and Annapolis. At Bear River our vessel went up to the town. When we entered Annapolis our vessel was at Annapolis. I never saw a halibut or a codfish caught except in boats. Have never been to the banks fishing. I do not know what bait they use in fishing on the banks. I do not recollect of having any other conversation with the captain of the *David J. Adams* except what I have stated. I do not remember of having any conversation with him in the presence of Hill. We brought the schooner back from Saint John because Captain Scott said it was ordered from headquarters. I last saw some of the crew of the schooner in Digby on the day they came over from Saint John in the steamer; that was two or three days after I boarded the schooner. I did not personally make any report to the Government of what we had done with this vessel. I understood that Captain Scott did. I did not see any report, letter, or telegram from Captain Scott to the Government or to the minister of the marine and fishery department, but he told me that he had reported the facts of the case to the marine and fishery department.

Question. Did he tell you what that report was?

Answer. No. (Objected to by Mr. Graham.) I did not see it or hear it read. I do not expect a red cent out of this matter. If there is any thing left the Government has power to dispose of it to suit themselves. I do not intend to make a claim for any part of it, because I do not know that I am entitled to it. I think there are as many as twenty vessels fitting out for fishing at Digby each season, from 15 to 45 or 50 tons. The morning of the seizure the wind was to the north, blowing in; when the schooner was attempting to go out the tide was flood.

Re-examined by Mr. BORDEN:

I do not think the Annapolis basin is six miles wide in any place.

There is no place in the basin where you would not be within three miles of the shore.

CHARLES T. DAKIN.

Signed, deposed, and sworn at Halifax, in the county of Halifax, this 16th day of September, A. D. 1886. Before me.

W. W. McLELLAN,
Commissioner.

Adjourned till eleven o'clock Friday, September seventeenth, A. D. 1886.

(Indorsed:) Queen v. Sch. David J. Adams.

Sept. 22, '86. Received from N. H. Meagher in letter without date. Queen vs. Adams. Evidence of Hill and Dakin.

FRIDAY MORNING, September 17th, 1886.

Examination resumed.

FREDERICK ALLAN sworn.

Examined by Mr. BORDEN:

I was a seaman on the *Lansdowne* in May last. I remember the *Lansdowne* coming from Saint John to Digby in May. We arrived at Digby about eleven-thirty at night. The chief officer, Hill, called for his boat's crew. I was coxswain in his boat. We got the boat ready and lowered her, and rowed to some schooners there, but they were all Canadian vessels. We did not find any American schooners there at that time. I was in the morning watch, from four to eight, on the next morning. That next morning the chief officer called for his boat's crew again. There was a schooner lying down the basin in a northeast direction from the *Lansdowne*, and quite handy the land. We rowed over to the schooner and took hold of her with a boat-hook. She was getting under way when we were rowing over to her. When we got alongside of her Officer Hill asked the captain where he hailed from, and he said from Gloucester. He asked him the name of the vessel, and he said the *David J. Adams*, and the captain's name was Kinney. I do not remember what he said the owner's name was, but I think he said it was Lewis. The chief officer asked him if he had any bait on board, and the captain answered "No." We shoved off and went back to the *Lansdowne*. We were ordered out that morning to board the *Adams* again. She had got down about to the inner mouth of the gut. Chief Officer Hill went in command that time, and he and I went on board the schooner. We asked one of the men to help to take the hatch off, and one of them assisted, and I went down the hold. There were three ice-houses there; there was one in each wing and one amidships; the one amidships was underneath the hatch. I looked into the ice-houses, and one of them in the wing had ice in it; that was all I noticed in it; some of the ice was cut up into small pieces and some inunks about eighteen or twenty inches square. The ice-house in the other wing had some halibut in it; they looked to be fresh, and had ice on them. The one in the middle was boarded up with a door and a bar across it; it was shut when I went down. I took the bar off and looked in and saw some herring in there; there was ice in it cut up and mixed with the herring. I picked up one of the herring and passed it up to Chief Officer Hill,

who was standing by the hatch. I saw quite a number of herring on top; the herring were spread about with ice on them to keep them fresh; the herring appeared to be all alike, but I didn't look at them particularly; they appeared to be hard and seemed to have been caught about two or three tides; the gills of the herring were red. The captain was standing by the hatch when I handed up the herring to Hill. Hill said, "They look kind of fresh, captain;" and the captain said they were ten days old, and made some remark about the banks. I don't think Hill went down the hold that time. We went back in the boat to the *Lansdowne*. Our crew did not go aboard, but Hill did. Then Captain Dakin and Hill came on the boat and we went over to the *David J. Adams* again. She was trying to get out in the mean time, but not making much progress, because there was a head wind and tide. Previous to this the *Lansdowne* had steamed down towards the schooner. Captain Dakin, the chief officer, and I went aboard the schooner. I went down the hold and passed up two or three herring to Captain Dakin. He looked at them and then he went down the hold, and he turned a few of the fish over underneath that was in the same ice-house that I have been speaking of. The captain of the schooner was there when Captain Dakin was examining the herring. I think that Captain Dakin said that the fish were too fresh and hard to be ten days old. Captain Kinney did not say anything in reply that I can recollect. After we made the examination we went back to the *Lansdowne*. The boat's crew did not go on board, but Hill did, and he came back to the boat and we went over to the *David J. Adams* again. Hill told the captain of the schooner that he would have to put his vessel about. They put her about and brought her up opposite the Digby pier. I was in a boat of the *Lansdowne* in tow of the schooner, and the *Lansdowne* followed. The second officer and a boat's crew went on board the schooner afterwards. Our boat's crew took Captain Scott ashore after that. He remained on shore for awhile and returned in company with a couple of gentlemen, and went on board the *Lansdowne*. After that Captain Dakin, Captain Scott, Chief Officer Hill, and a couple of other gentlemen who had come on board, went down to Victoria beach, landed there, and went up to some house. I remained in the boat. They remained there about a half an hour, when they returned, and we started back to the *Lansdowne*. In the afternoon we took Captain Scott ashore. We took Captain Scott, Captain Dakin, the chief officer, and a couple of other gentlemen on board the schooner. The chief officer and his crew took charge of the schooner from that until twelve o'clock, then they were relieved by the second officer and his crew. When we first saw the schooner in the morning I noticed that her maintop mast was broken off by the cap; she was on the side next to Digby gut. When I first saw her it was after we had started to go to her, and when we were about half ways between her and the *Lansdowne*.

Cross-examined by Mr. MEAGHER:

Have been in the Government employ a year the fifteen th of this month, and am in the *Lansdowne* yet. Have never talked over what evidence I was to give here. When I spoke to Mr. Borden last night that was the first time I spoke to anybody about it. I have told lots of people what was done that morning. Have never talked to Hill, Captain Dakin, or Captain Scott about what evidence I was to give here. When we went down to Victoria beach there were with us Captain Dakin, Captain Scott, the chief officer, and a couple of other men. Our boat only went to Victoria beach once that day, and that was after

the vessel was brought up and anchored at the pier. I have no doubt that Captain Scott, Captain Dakin, and Mr. Hill went in the boat at that time to Victoria beach. I understood the captain of the schooner to say that he had caught the fish on the banks, I know that he said something about the banks. When we went out the first time in the morning to go to the schooner we did not have to change our direction from the time we started from the *Lansdowne* till we reached the schooner. I have no recollection of any conversation between Captain Dakin and the captain of the schooner any more than that he said the fish were too hard and fresh looking to be ten days old. On shore I work in the occupation of a rigger. I have been going to sea only since I have been on the *Lansdowne*.

Re-examined by Mr. BORDEN:

I came here in consequence of a telegram. I was told to get ready and come to Halifax.

FREDERICK ALLAN.

Signed, deposed, and sworn at Halifax, in the county of Halifax, this 17th day of September, A. D. 1886, before me.

W. W. McLELLAN,
Commissioner.

EDWIN C. DODGE sworn.

Examined by R. SEDGEWICK, Q. C.:

I live at Digby; have lived there for twenty years; am a master mechanic. In May last I was foreman of the Government pier at Digby; it is called Digby pier. On the sixth of May last I was at work on the pier. That morning I noticed a vessel coming up the basin; it was sometime in the forenoon; I noticed that she had no maintop mast; she stood up and tacked below the wharf. It proved to be the *David J. Adams*. She came to within about one hundred and fifty yards from the wharf; she then tacked and stood over towards the Clement shore and anchored about east-southeast from the wharf. I was just above and to the east of Bear island. There is a weir in that vicinity. She was anchored about one-quarter of a mile from the shore. I saw part of the stern of the vessel as she sailed past the pier. Part of her stern was covered up by canvas, and I could not see any name. The canvas hung over her stern around the taffrail, and it is unusual to see a vessel with a sail there. I am familiar with vessels, and I never saw one with a sail there before. I have seen the vessel every day since, and have been on board of her.

Cross-examined by Mr. MEAGHER:

I was not up to her while she was at anchor at the place I have spoken of. The place where she anchored was between three and four miles from the pier. The Clement shore is low where the vessel was. I think the wind was easterly that day. She passed the wharf in the forenoon; I could not say the exact hour. The canvas laid over her stern; it covered the rail and hung down a foot or so from the top of the bulwarks. It was a dark piece of canvas, looked old, and appeared like a sail that had been used. Mr. Young, Riley, McKinnon, and Watt, and several others noticed the vessel also. I went on board of her some two or three days after that, when she was at the wharf at Digby; in the mean time she had been to Saint John and back again.

I did not go to Saint John with her. She got under way and stood out the gut and the *Lansdowne's* boat went after her and brought her back again. When I saw her she was getting under way, and I watched her until she went out of sight that day. She was lying at anchor between Bear island and Clement shore. I never saw her lying between Bear island and the Granville shore. It was between six and seven when she got under way the next morning. I was going to my work when I saw her. My house is one-quarter of a mile from where I work, and I go to work at seven o'clock. She had her mainsail, foresail, jib and outerjib on that day. I am not in Government employ at present. I never boarded her until after she came to the pier. Her bulwarks are between two and three feet high, probably three feet.

EDWIN C. DODGE.

Signed, deposed, and sworn at Halifax, in the county of Halifax, this 17th day of September, A. D. 1886, before me.

W. W. McLELLAN,
Commissioner.

GEORGE VROOM sworn.

Examined by Mr. GRAHAM:

I live at Clements, in the county of Annapolis; my business is weir-fishing and farming. I went to sea for twelve years. My weir is at Clements, below Deep Brook. Captain Spurr and his son and my brother are interested in the weir with me. Captain Spurr's son's name is Robert, and his name is William B. Spurr. I have an ice-house in addition to the weir. We generally put in about one hundred tons of ice, sometimes more and sometimes less. On the sixth of May last, in the forenoon, I was at Bear river, and arrived home that day between twelve and one o'clock. Before I got home Captain Spurr's son met me. I saw a vessel lying there which afterwards proved to be the *David J. Adams*; her main top mast was carried away. I have seen her since at Digby. We dip the fish out of the weir with a dip-net into our boat. When I got home I had my dinner, and went to the ice-house and weighed out two tons of ice; Captain Spurr's son and some of the crew of the vessel were with me. The skipper was not there, but was away trying to get a twenty-dollar bill "*worn*" changed; he did not get it changed and I changed it for him; I gave him ten dollars and fifty cents, and I kept the balance for four and a half barrels of herrings and two tons of ice. Robert Spurr had made the bargain before I got there; he was the only one of the company left at home. We weighed the ice out and put it on an ox waggon and left one of our boats to take it off. They took it in our boat and in their own. We cut the ice out of the lake in blocks weighing from one hundred to two hundred pounds each; we bury it in sawdust to keep it; it was hauled down to the shore and one and a half tons of it put into our boat and the rest in the schooner's dory. The captain of the schooner came to the ice-house just before I was done weighing out and paid me for the ice; he said he had walked three miles to get the twenty-dollar bill changed. Several of his crew were there when he came to the ice-house. The vessel was lying just off-shore about a half mile, and her dory was ashore. The captain was up to my house probably half an hour; he said he had come from the north shore and had laid off Granville the night before. Granville is across the Annapolis basin, and Granville shore reaches from Victoria

beach to Annapolis town. I told the captain to drop his schooner off in the stream farther, where she would lie floating. He wanted the following morning's catch for bait, and asked if I would promise him the morning's catch, and I told him yes; he said he wanted about twenty barrels more of bait; he was on shore after I came home about an hour and a half. He engaged the next morning's catch at the rate of one dollar per barrel. He talked about the treaty, and I said I could see where his vessel came from; he replied yes, she was an American vessel; that he could get his supplies from New Brunswick, hire his crew and carry his fish to Gloucester, pay the duty, and make more money than he could by fitting out in Gloucester, because he could hire his men cheaper and buy his supplies cheaper. Next morning I noticed the vessel getting under way just about daylight; I mean by getting under way that she was getting up anchor and sails; next I noticed the cutter *Lansdowne* off of Digby and a boat on the way over to the schooner; it was a white boat. When the vessel started there was a very light breeze; she stood right away for the gut. The boat boarded her; I saw the boat leave her, and she proceeded on down to go out the gut. When I saw the *Lansdowne* she was at anchor. I saw the *Lansdowne* get under way some time afterwards and steam down to the gut; I next saw the vessel haul down her jib, and I heard she had grounded; she was then right across westerly from Victoria beach. I then saw the *Lansdowne* steam down and the vessel went back to Digby; I think it was the same vessel I saw off of my ice-house. Arthur Vroom is interested in the weir situated about one mile from my place on the Clement shore. My partner, Spurr, came home about six o'clock that day, and Robert Spurr was there all day; I did not notice the vessel's stern. I sell bait to the Digby fishermen. There is quite a number of fishing fleet about the basin at Annapolis, Digby, and Clementsport. In Clementsport there are about five, and in the other places from twenty to twenty-five. I supply them with bait when I have it. They fish in the Bay of Fundy. In the spring they catch codfish and halibut and in the summer hake and haddock. They fish on the south shore of the Bay of Fundy, and one-half way or more over. They go the Grand Manan banks sometimes. On the south shore they fish three miles off, sometimes further, for codfish.

Cross-examined by Mr. MEAGHER:

When the vessel started to go out in the morning it was ebb tide and there would be probably three fathoms of water where the vessel was anchored. To heave up her anchor and get under way I should say would take fifteen minutes. Where she was anchored was above the mouth of Bear river about a mile. There is a custom-house at Digby, Bear river, Clementsport, Granville, and Annapolis. Robert Spurr is in Halifax. I had never seen the captain of the schooner before this day. He was a smallish sized man, quite tall for his size, and rather light-complected. I should suppose he was five feet ten inches. He had a mustache and a whisker on each side of his chin, and his chin was shaved. He had no whiskers on the side of his cheek or jaw. I would not take him to be over twenty-four years of age. He wore rubber boots. My knowledge that he was captain was obtained from the fact that he said he was captain and his crew called him skipper. He gave me a twenty-dollar bill on the Bank of Salem. That did not excite my suspicion in any way. I first saw him at my ice-house. I had nothing to do with making the bargain for the bait or the ice. The widest part of

the Annapolis basin is six miles; some say it is not that much, but it is always called six miles. While the boats were going back and forth to the vessel with the ice I and the skipper went up to my house. I did not see the boats go on the vessel. Where the vessel anchored was between five and six miles from the Digby pier. I saw her getting under way next morning; it was daybreak, and I could just see where she was. I was on board of her in June and on the twenty-third day of July. She would be about a half a mile from where I was when lying off my place. The wind was westerly that day. She was lying parallel with the shore. I was nearly abreast of her, and was no nearer to her that day than that. I generally observe a vessel pretty closely. I could not tell you whether she had one or more white streaks on her. She was rigged for mainsail, foresail, and two jibs. I was working in the weir that day for a couple of hours or better; then I was on the farm, right up from the beach. I advised him to drop out so that he could lay afloat. When I saw her take down her jib she was well down to the gut. I have caught fish outside of Digby gut; the last I caught there was four years ago. I have not pursued fishing outside there to any extent. I once fished with a man for a week, and I have been there some three or four times besides that; a half a dozen times would cover all my experience there, and that was boat fishing only. I never caught halibut there and never saw them caught; I only know from hearsay that they were caught there. There are vessels that fit out to catch halibut in the vicinity of Digby; they fish just off-shore. I never saw much fishing there; I speak particularly from hearsay. I have never seen vessels catching halibut within three miles of the shore of that place. The general business of cod-fishing is done more than three miles from shore. There is a place called the Ledge and another the Horseshoe, about three miles from the light at the outer end of the strait, where cod-fishing is carried on. When I first boarded the schooner it was some time after the twentieth of June, and in the mean time I had not been on board of her. When the ice was paid for and when I had conversation with the skipper Robert Spurr was present, also a couple of old men. I was not on board the *Lansdowne*. I never told anybody that the skipper had bought bait or ice from me until I saw Mr. Graham last June in Bridgetown, when I was at court there. I did not send any person on board the *Lansdowne* to tell them that I had been selling bait. Spurr did not go. The men were ashore, and I got their help to weigh the ice and take it away. I saw them start for the vessel and they brought my boat back.

Re-examined by Mr. GRAHAM:

My brother has a telescope. I used it on this occasion. I was interested in the movement of the steamer and looked at her several times through the glass. I could see the schooner with the naked eye when she was with the *Lansdowne*.

Recross-examined by Mr. MEAGHER:

I did not have the glass with me at my work. I went up to my brother's house to use the glass; that was during the forenoon. I could not name the last time that I went to the house to see the vessel from the glass, but I think it was before eleven o'clock in the morning. I was working in the weir at the time; Robert Spurr and my brother were working with me in two boats. When I went ashore my brother went with me. When I went to the house to look through the glass at the

vessel I was working on the farm. Both times when I went to look through the glass I went from the farm and not from the weir.

GEORGE VROOM.

Signed, deposed, and sworn at Halifax, in the county of Halifax, this 17th day of September, A. D. 1886, before me.

W. W. McLELLAN,
Commissioner.

ROBERT SPURR sworn.

Examined by Mr. BORDEN :

I live at Clements ; am seventeen years of age ; work with my father, Mr. William Spurr ; he owns part of a weir with Mr. George Vroom. I remember a schooner being anchored near our weir the sixth of May. She got there between eleven and twelve in the forenoon. My father was not at home that day, and Mr. George Vroom was also away in the forenoon. Three persons came ashore from the schooner. I had conversation with them. They asked me who owned the bait. There was bait in a boat there. The boat was anchored in the weir. I told the man that spoke to me that my father owned part of it and I could let him have it. There were four and a half barrels of bait in the boat. He said he wanted to get the bait, and I told him if he dropped his vessel abreast of our place and let me have one of his men, I could put it on board for him at the rate of one dollar per barrel ; he said he wanted more ; that he would take the four and a half barrels, and would stay till the next morning to get what was in the weir in the morning's tide. The man who spoke to me was better dressed than the other two men who were with him. I did not see them come ashore. He left a man with me, and he and I launched a boat. The vessel dropped up in the mean time. The man that made the bargain with me and the other man went down on board the vessel before she dropped up. She came to about a quarter of a mile below the weir and about a half a mile from the shore. I and the man took the bait alongside of the vessel. I dipped the fish out of the basket, and a couple of men dipped them on deck and put them in barrels. While I was alongside of the vessel the captain asked me where he could get ice ; it was the same man who made the bargain with me for the bait. I told him we had ice at two dollars and a half a ton. He spoke to me about engaging the next catch, and said he would take two tons of ice at two dollars and a half a ton, and that he would be ashore immediately after dinner to get it. I was on the deck of the vessel for fifteen minutes. I saw "*David J.*" on the stern. There was a canvas hanging down over the stern. I asked the captain where he was from, and he said from the North Shore. The man whom I supposed to be the captain said she was the *Adams Craft*. This *David J.* was high up on the stern, under what is called the "topgallant bulwark." He did not pay me for the bait at the time and said the smallest bill he had was twenty dollars, and when he came ashore to pay for the ice he would pay for the bait. I saw him after dinner coming down to the shore ; he came to the ice-house ; some of his crew were there, and Mr. George Vroom had returned in the mean time ; he was in the ice-house when the captain came for the ice. He and I were weighing out the ice for this man to whom we had sold it ; it was hauled down to the shore and some of it put in our boat and some of in the vessel's dory. The vessel's crew took the ice off to the vessel and brought our boat back. The captain did not go off with the ice, and I think he went up to Mr. George Vroom's house. I remained on the beach while the boat went to the vessel. I saw her go to the

vessel. I did not see them put the ice on board. They put it on from the other side of the vessel. I saw them go around that side of the vessel and return with the boat without the ice. We took the ice from the ice-house to the boat with the ox-team. The blocks of ice would weigh from one hundred and twenty-five to two hundred and twenty-five pounds, and be about two and a half feet long, one foot deep, and fifteen inches broad. The vessel's crew came ashore, and the skipper went back on board. He paid Mr. Vroom for the ice and bait, and he changed the twenty-dollar bill for him. They dropped the vessel off in deeper water that afternoon. She was still there in the evening, and I saw her there the next morning about the same place. I supposed her to be the same vessel. I was going down to the shore when I saw her the next morning, and she was under way. I saw the steamer down at Digby. The schooner sailed towards the gut, and had her main topmast broken off very close or about one foot from the cap. She had two jibs. There was no other vessel that I remember of that we sold any bait or ice to that day. I saw her during the forenoon when she was going down; and I saw boats go on board of her. I do not remember how many times they went on board. I saw a boat board her when she was half way from our shore. The boat came from the west. That would be from the direction of the steamer. The boat looked white, but she was so far off I could not tell exactly what the color was. After that I saw the vessel go up to Digby. The steamer went down and the vessel went back to Digby with the steamer following. The steamer was quite close to the vessel after she got down to the gut. I am not sure whether they towed the schooner back or sailed her.

Cross-examined by Mr. MEAGHER:

I do not remember of seeing any money paid over to Mr. Vroom; the only way I know that Mr. Vroom was paid anything is from the fact that others had told me. Bear Island is about two and a half miles from the place where bait was put in the boat and about southwest from there; that would be further down the shore towards Digby. The vessel was between our place and Bear Island. From our place to the lower end of the basin near the gut it is called six miles, and it is seven miles to the light-house. I was on board of the vessel. I do not remember what color she was. I do not remember of seeing any streaks on her hull. I did not notice whether her name was painted on any part of her bow. I was only on board of her once and I did not take much notice of her. I only supposed the man was the captain. I have no means of knowing it. Have not seen him since and have not been on board the vessel since. She had a piece of canvas clewed up and hung to her davits; it was rolled up pretty snug and tied to the davits when I saw it. It was outside of the railing and the davits extended out over the stern. I went on board of her from the inshore side. Her stern was pointing towards the shore. She hove to when I was on board of her. She stood inshore a little and then came to anchor. After she anchored I forget how she swung. She was heading towards me part of the time when I was rowing out to her. Before I got to her she tacked and stood her head the other way. I was four or five rods away from her then. She tacked and hove to at the same time. I did not examine her very closely.

ROBERT SPURR.

Signed, deposed, and sworn at Halifax, in the county of Halifax, this 17th day of September, A. D. 1886, before me.

[SEAL.]

W. W. McLELLAN,
Commissioner.

ARTHUR W. VROOM sworn.

Examined by R. SEDGEWICK :

I live at Clements, about a mile to the east of George Vroom's weir. On the sixth of May last I was planting potatoes, when a man who had a vessel off the point came to see me and said he was the captain of the craft; he wanted to get a twenty-dollar bill changed to pay for some bait of herring. He said he bought the bait from the weir, pointing to Vroom and Spurr's weirs. It was the only weir finished at that time. I did not change the twenty-dollar bill. I saw the vessel come in that forenoon; I did not see her afterwards coming near to the weir. I did not see her change her position, but I saw boats going out from the shore to the vessel, backwards and forwards. That was the only vessel there that day. She left the next morning; I saw her hoisting her sails. She did not go out the gut, but changed her course and came back to Digby, and the *Lansdowne* was behind her. I saw the vessel afterwards at Digby, and her name was *David J. Adams*. When I saw her off the point I noticed she had no topmast, and subsequently at Digby I saw that it was broken off.

Cross-examined by Mr. MEAGHER :

I know it was the sixth of May, from the time I put in my potatoes; I generally keep a record of planting of my potatoes every year, and I looked at the record before I came away. I was planting that day and also two days afterwards. I was about a mile from the vessel, and when she was there I was not any nearer to her than that. At that time I did not notice that she had a broken topmast. I have never been to sea as a seaman, but am pretty familiar with vessels. It was about two weeks after I first saw her that I boarded her at Digby. I will not swear that the vessel I boarded at Digby was the same vessel that I first saw, but she looked like the same vessel from her whole rigging, her color, and her boom. I saw her taken up to Digby and beached, and I was told that she was the same vessel. I could not tell you how many white streaks she had; she was a light-colored vessel, but I could not give you the exact color. I was on board once only, but I was on the wharf once or twice since.

Re-examined by Mr. SEDGEWICK :

I have a weir. I know that Mr. George Vroom keeps ice.

ARTHUR W. VROOM.

Signed, deposed, and sworn at Halifax in the county of Halifax, this 17th day of September, A. D. 1886, before me.

W. W. McLELLAN,
Commissioner.

Adjourned till Saturday, September 18th, 1886, at 10.30 o'clock.

(Indorsed:) *Queen v. Adams*. Evidence of Allan Vroom, Spurr, Dodge, and A. W. Vroom.

Sept. 22, '86, rec'd from N. H. Meagher in letters without date.

SATURDAY, September 18th, 1896.

Examination resumed at 10.30 a. m.

SAMUEL D. ELLIS sworn.

Examined by Mr. GRAHAM:

I have seen the *David J. Adams* about a dozen times, and recollect the time I first saw her. I was at my house at Victoria beach. My employment has been that of fishing; have been fishing about fifty years. In May last I was catching herring. We call them net-herring. Digby herring is a small herring. I remember the time the *Lansdowne* was at Digby. I saw Captain Scott; saw the *David J. Adams* and the *Lansdowne* anchored together just inside of the harbor abreast of Victoria beach; a crew from the *Lansdowne* boarded the *David J. Adams* in a boat. I saw the *David J. Adams* two days before that; she came from the northward; when I first saw her she was about three-quarters of a mile outside coming in; she threw her dory over, and the captain and two or three men come on shore in the dory, and the captain wanted to know if I had any bait; I told him I had. The bait was in my fishing house; it was herring which I caught that morning. He wanted to know if I would sell it to him. I told him no, because it was against the law, and that I could not sell to Americana. He replied that the schooner had been an American, but the English had bought her. He asked me what the price of the bait was, and I told him it was one dollar a barrel. He said he would give me one dollar and twenty-five cents a barrel for it if I would let him have it. He offered me the one dollar and twenty-five, and I took it. There were four barrels of bait. I measured it in barrels. The two men from the *David J. Adams* helped me to measure. They carried it down, put it in the boat, and went on board the *David J. Adams* with it. They carried it down in a barrel with handles on it. The tide comes in quite near my fish-house. I notice that the vessel was black with a dirty white streak around her, and she had something over her stern which looked like an old sail. It was a dark piece of canvas. Her topmast was carried away about one foot above the cap. She was so near that I could have talked to the men on board; but I could not see any name for the canvas that was hanging down. The captain was right alongside of my fish-house when I was measuring the bait. He paid me for the bait. He did not get anything else from me. He left me and said he was going up the basin somewhere on the same business, and was coming back again, and if I had any bait then he would get some more from me. I told him if I had any I would let him have it. I sold him all I had the first time. There was no bargain made as to what he was to pay me for the second lot. When he came back I had no bait for him. The first day he came there it was a dark day, and the wind was blowing pretty strong. After the first time he was in he took his vessel inside of the harbor out of my sight. Digby pier is in about a south-southwest direction from Victoria beach. Victoria beach is not a farming place, but there are some small gardens there, and it is on the east side of Digby gut. They use herring bait for halibut and cod-fish and whatever other kind of fish they are going for; in the spring of year they use it for halibut and cod-fish. The herring is sliced up and cut into small pieces for cod-fish. If they are fishing for cod-fish and halibut they generally cut it in two pieces, but for cod-fish alone they cut it into four or five pieces. In keeping herring they break up some ice and put it over them, then more herring is put in, then more ice, and so on. It is necessary to ice her-

ring at once, or they will not keep; they will last as much as two days without ice. I never have been on fishing schooners. When I saw the schooner go up to Digby it was after the *Lansdowne* boarded her. I saw the schooner afterwards lying off Digby after she had been docked. It was in the latter part of the day when I saw her go up to Digby after the *Lansdowne* boarded her, but I would not be certain. I saw the *Lansdowne* lying off Digby pier. The schooner passed where I lived and went ashore, and the *Lansdowne* came down; the vessel lay there grounded for a short time; she had all canvas on when she went ashore, or some of it was left on her, but I cannot say how much. The mainsail and foresail were on her, but I cannot say about the jib. I knew she was aground, because she had fetched up, and the captain told me she grounded. That was about two and a half miles from where the *Lansdowne* was at anchor. We took the fish from the weir in boats alive. We caught them with dip-nets.

Cross-examined by Mr. MEAGHER:

I was sixty-two years of age last April. I never had any experience except in boat fishing. We use herring for boat fishing. We principally catch codfish and pollock in the first part of the season, and in the latter part of the season haddock. Our boat fishing season begins in April. I have not done anything at boat fishing for five years, but have looked after weir fishing during that time. I have had a boat engaged during those five years in outside fishing; boat always goes off and comes in on the same day, and takes its bait with it each morning; the boat is never out at night. I do not keep an ice-house; in connection with boat fishing we do not use ice; have never been engaged in and have never had any experience in bank fishing. I first saw the vessel in the mouth of the harbor coming in about three-quarters of a mile outside of Victoria beach; from Victoria beach, to the lower end of the basin or the beginning of the gut it is about half a mile; when I first saw the vessel she was two miles from Victoria beach, just inside the harbor. The harbor extends three miles below Victoria beach seaward; it is all called Digby harbor from inside the light-house up to Digby town. Turner's Cove is part of Digby harbor. The vessel was about one mile inside the light, that is to say, one mile from the entrance of Digby harbor. When the dory left her to come ashore she was one and a half miles from where I live, and she was a little past the center of the harbor. From the light-house at the outer end of the strait to Digby pier I should think is about nine miles. The harbor of Digby extends down from the pier to the light-house about nine miles; from where she hove to and the dory came on shore from her to where the custom-house is would be about five and one-half miles; when she sent the dory ashore she was in the harbor of Digby. The captain was kind of a tall man and I think sandy complected, not a very full face, he wore a black coat, but I do not know what kind of pants he wore; I should judge that he was over thirty years of age. I saw him three times, twice in one day and two days afterwards. I could not say that he had any whiskers. I do not know; I will not undertake to say whether he had any whiskers or beard. He had something on his face, but I could not say what. When the vessel hove to the first time, and the dory came ashore, she was about three-quarters of a mile from the shore; she was between me and the mouth of the harbor; when she came up she came abreast of Victoria beach. I was not on board that time. When she came ashore for the bait it was in the afternoon, about three o'clock; they remained on shore about a half hour. I helped them measure the bait. The tide was low and I was up at the fish-house. The tide usually

as two days when I saw the vessel. I had heard her. I had been docked. I had seen her at Digby after she had been there. I saw the vessel where I lived. The vessel lay there. I went ashore. The main-jib. I knew the captain told me from where the wharf in boats rises about twenty feet. The shore there slants with a gradual slope. My fish-house is about twenty feet above high-water mark. I was not any nearer to her than that. It was somewhere about the seventh or eighth of May. The vessel left my place and went to the southward of me and went about a half mile out of my sight in the direction of the basin, up the harbor, going to the south and east of the pier, below the pier. The next time I saw her she was on the west side pretty much abreast of me; that was the second day from the time she first came in. I did not see her from the first day she came in until the time she grounded. When the dory came on shore she was lying with stern towards shore. The canvas was black looking and it hung down over her stern; I took it to be an old sail. I know that the man was the captain because he told me he was; that is the only means I have of knowing it. Have never been on board the *Lansdowne* nor alongside of her in a boat. I never sent my boat to her, nor do I know of her ever having gone there. I never told them at the *Lansdowne* that the captain of the vessel had bought bait from me, but they came to me about it. I have no knowledge of my boat going to her and reporting, and if she did so I did not know anything about it. The piece of canvas hung down five or six feet from the top of the bulwarks; that is my judgment; it was not fastened to the bulwarks at all and I could not tell you where the inside of it was fastened; I did not notice that it covered the top of the rail; all I noticed was that it hung down over the stern. I first refused to sell him bait, but I said the price was one dollar a barrel, then he offered me one dollar and twenty-five cents and I took it. It took me about a half hour to measure out the bait and settle with the captain. I call the place where the vessel was at that time the harbor of Digby. She grounded on the Digby side of the harbor, a mile from my place. The day she grounded I was not doing anything particularly. The day before I was at home in the vicinity of my fish-house. I could see as far as ten miles up towards Clements shore and two miles above Bear island. I did not see her till she got about half a mile from where she went ashore. The white streak was not very large. I should suppose it to be about two inches wide. I have not been on board of her since. She was lying at the wharf and I was there.

Question. Will you swear that the vessel that came and bought the bait from you and the vessel that grounded was the same vessel?

Answer. I swear that the same captain came to me, but I do not know about the vessel. He came to me some time in the afternoon of the same day that she grounded. I saw him coming. When I first saw him coming back he was coming across the harbor, perhaps a half mile from his vessel. It was about two hours after that when I saw her going up with the *Lansdowne* to the Digby pier. When the captain came back to me for bait he did not remain any time, but went away. After he left me it was about four hours before I saw her going up with the *Lansdowne* towards the pier. I did not see any boats going to or from the vessel that day, but I saw the cutter's boat going there; that was after she got afloat. From the second time that he came to me for bait and left to go back to his vessel until I saw the cutter's boat going towards the schooner, I should judge it was three hours, and from the fact that she had got afloat in the mean time I think it was more than one hour. I can not read or write.

Re-examined by Mr. GRAHAM:

I do not carry a watch, but I can tell the time by the clock. I keep a clock at home. Digby gut runs from the basin to the northward,

and is about seven miles in length and runs north and south. The light-house is on the west corner of the gut.

(Mr. Meagher objects to further re-examination.)

That is the beginning of the gut and it runs south about seven miles. Vessels go on both sides of the pier; it is built for steamers. I never heard of Digby gut being called Saint George's channel. It is one mile wide from the outside end to the inside end of the gut. On the west side there are two anchoring coves, and on the east side there are five. The east side is settled; the houses are from ten to twelve rods apart, and there are twelve or fourteen houses in the place. The west side of the gut is not settled. I can not tell what day of the week the *Lansdowne* boarded the schooner. I should think it was about the tenth of the month. It was the seventh or eighth when I sold him the bait, but I think it was the tenth when she was seized, but I could not tell the date exactly. I recollect when she came back from Saint John, but I can not tell the day of the week as I paid no attention to dates.

his
SAMUEL D. x ELLIS.
mark.

Signed, deposed, and sworn, at Halifax in the county of Halifax, this 18th day of September, A. D. 1886, the same having first been read over to deponent, before me.

W. W. MCLELLAN,
Commissioner.

Examination adjourned until Monday, September 20th, 1886, at two o'clock p. m.

(Indorsed:) Queen v. Adams. Evidence of Ellis.
Sept. 22, '86. Rec'd from N. H. Meagher in letter without date.

MONDAY, September 20th, 1886.

OWEN RILEY sworn.

Examined by Mr. BORDEN:

Live at Digby; moved there the third of last April, and previous to that at Fort George on the bay shore in Annapolis county; my occupation is fishing and other work; have been fishing off and on since 1854. When I first saw the *David J. Adams* I was working on the Digby pier. She appeared about the sixth or seventh of May, and came up to within three or four hundred yards of the wharf; she held off about northeast for Granville shore. Mr. Edwin Dodge, Mr. Watts, and Mr. McKinnon, and several others were there. When she jibed over and hove her stern to us I saw a tarpaulin canvas hung down over her stern. It was a dark piece of canvas. I could not see her name then, because it was covered up by the canvas. She had been a two-topmast schooner. She carried no foretopmast, and her main topmast was broken off above the cap. I saw her afterwards when she was taken around to the *Racket*, and again when she was brought to the wharf at Digby. I saw her frequently since that time, mostly every day. She was there when I left. I have been fishing all over the Bay of Fundy, off of Yarmouth, LaHave, around George's and Brown's bank, and Seal island. I have fished in both vessels and boats. Have gone fishing from Digby and made three trips out of Gloucester. Have fished for halibut, codfish, hake, and haddock. Codfish, hake, and haddock

have been caught generally along the south shore in the vicinity of Digby Gut. They commence in February or March and continue up to the latter part of May or the first of June. Cod-fishing extends from April until July. We catch halibut within a quarter of a mile of Digby Gut shore, and as far out as fifteen or twenty miles. We catch codfish also from one-quarter mile of the shore right across to the other side of the bay. Vessels fit out in Annapolis and Digby every year for fishing. There has been as many as fifty large and small vessels, ranging from twenty-eight to seventy or seventy-one tons. Most of them fish with what they call trawls and hand lines, but in the Bay of Fundy it is mostly all trawls. The Digby vessels use herring chiefly for bait. Vessels as well as boats go in close to the shore to fish; sometimes the vessels cannot get in and they send their boats in. They preserve their bait in ice to keep it fresh. When they want to keep fish fresh they ice it.

Cross-examined by Mr. MEAGHER:

I was never on board of this vessel. I fished up to last fall. Was engaged fishing last year and the year before. The vessel was about three or four hundred yards from the wharf when I saw her. In the morning it was foggy; after awhile the fog lifted and the sun came out. I sailed from Digby and from Port George. Sailed in the *Constitution* trawling for codfish, haddock, and hake. The gear for halibut would not be suitable for codfish. The outfit for the one would not be suitable for the other. I never fished in any vessel fitted out exclusively for halibut fishing, but usually in vessels fitted out for codfish, haddock, and hake. The grounds for halibut are pretty nearly the same as those for codfish. When they fit out exclusively for halibut fishing they fish from five to thirty-five miles west of Briar island and Seal island, and as far up as abreast of Cape Saint Mary's. I do not say that vessels which fit out exclusively for halibut fishing fish within five miles of Digby shore; it is not usual for them to do so, and they generally go to the westward from five to thirty-five miles. The distance from the shore at which they catch halibut does not vary much all along the coast there, but it is generally more than five miles from the shore. I will not say that they go on purpose to get halibut within five miles of the shore. I do not know the places called the Horse Shoe and the Ledge. Never saw vessels fitted out exclusively for halibut fishing close in shore of Digby. In Saint Mary's bay I have seen them as near as three-quarters of a mile from shore, but not vessels exclusively fitted out for halibut. I will not undertake to swear positively that the vessel I saw the first day and the vessel I saw afterwards was the same vessel, but to the best of my judgment she was the same vessel. The wind was light the day I saw her. For vessels fitted out exclusively for halibut fishing the season lasts sometimes until June, but the season usually for halibut extends through February, March, and April. They usually catch halibut exclusively at the Lurcher and Trinity ledges and on the Southwest Rip bank. The Lurcher is ten or fifteen miles off Cape Saint Mary's shore; the Southwest Rip is five miles from the shore. There is no place where vessels that are fitted out exclusively for halibut fishing usually fish that is within five miles of the shore.

OWEN RILEY.

Signed, deposed, and sworn at Halifax, in the county of Halifax, this twentieth day of September, A. D. 1886, before me.

W. W. McLELLAN,
Commissioner.

Notice to produce paper writings marked "A" W. W. M. put in, and Mr. Graham asks for the enrollment of the *David J. Adams* and the license to fish, and all other ship's papers that were on board of her at the time of the seizure.

Adjourned sine die.

W. W. McLELLAN,
Commissioner.

(Indorsed:)

OWEN RILEY.

MONDAY, December 6th, 1886.

Examination resumed.

ANDREW KEANS sworn.

Examined by Mr. GRAHAM:

I am a fisherman and belong to Victoria beach. I know Stephen Taylor, and live about one hundred rods from him. Last spring he and I went on a vessel which afterwards proved to be the *David J. Adams*. I saw her on the evening of the day that she came in, after she anchored. That was Wednesday evening. We went to set our nets, and had to row close by her to get up to the berth where we set our nets. I noticed her maintop-mast was broken a short distance from her mainmast-head. We set our nets that night, and the next morning, about five o'clock, I and my son went out to our nets again. I got about a quarter of a barrel of fish. We generally haul our net and herring into the boat and pick the herring out afterwards. I rowed down to Stephen Taylor's landing with the nets and fish, and then picked the herring out of the net and put them into my boat. Taylor and I put our herring together and took them on board the *David J. Adams*. The herring were in strap-tubs in the boat. Stephen Taylor, my son, and myself went off in the boat to the vessel. I noticed the stern of the *David J. Adams* the first time we rowed passed her and the next morning when we went on board with the fish. In the morning there were some old sails hanging over the stern, and I noticed the words "David J.," but that is all that was visible. It was an old black piece of sail. I could not see the hailing place, as the canvas was hanging down too far. Mr. Taylor and I handed up the strap-tub of fish, and I went on deck of the vessel. Both of our catches, I should judge, amounted to about a half barrel. Mr. Taylor settled for the fish. We divided the money, but not until we got on shore again. I was paid for a quarter of a barrel. Mr. Taylor went down in the cabin to get his money on the invitation of a certain man they called Skipper. There were others on board at the time belonging to the vessel. I should think it was about half-past five in the morning when we went on board. After leaving the vessel I saw her get under way, and she went up into the basin. I saw her the next morning lying ashore on the west side of what we call Digby gut. That was the morning after we sold the bait to her. She was not there a great while after I first saw her. I saw the *Lansdowne* that day right abreast of where the vessel was ashore and off the center of the gut; saw the *Lansdowne's* boats go on board the vessel; saw a boat go aboard twice from the *Lansdowne*. She was afloat when I first saw a boat go aboard from the *Lansdowne*. Next I saw them square the vessel away and with the *Lansdowne's* run up to Digby. The first Sunday after we sold bait I saw the vessel when the *Lansdowne* brought her in, and I have been on board of her since at Digby. The first night

the vessel came in she anchored at Porter's eddy. That is about two hundred rods from where I fish in the gut. She could not be seen from the place where we started to go out to set our nets on account of the bend in the gut. We knew of the vessel wanting bait from word being circulated around that she wanted all she could get.

Cross-examined by Mr. MEAGHER:

The first evening I was within three or four rods of her, up by the broadside. I am not positive where her name is, but I think it is somewhere about the center of her stern, on what we call the sternboard of the vessel. I paid very little attention, simply noticing her enough to read what I could. I did not examine the canvas, and I don't know whether it was a piece of canvas or sail. The nearest I ever was to the steamer was about a quarter of a mile. I had seen her before, but I had never been on board of her. I could not say how close I had been to her before that. I think I saw her last year, but I am not positive about it. I was not close enough to her to swear that she was the *Lansdowne*. I did not read her name.

Re-examined by Mr. GRAHAM:

There was no dory on the vessel's davits when I saw her; she was lying at anchor.

ANDREW KEANS

Signed, deposed, and sworn at Halifax, in the county of Halifax, this 6th day of December, A. D. 1886, before me.

W. W. McLELLAN,
Commissioner.

STEPHEN TAYLOR sworn.

Examined by Mr. GRAHAM:

I belong to Lower Granville, near Victoria beach, and am a fisherman. I know Andrew Keans, the last witness. I recollect of going on board of a vessel last spring with bait, with Mr. Keans; it was between five and six o'clock in the morning. I did not see her name. My fish-house is about one hundred rods from Mr. Keans's. The morning that we took the fish to the vessel Mr. Keans came rowing along in a boat, accompanied by his son. He had a few herring in his nets; he took the herring out of the nets at my landing, and I put my herring with his. I had about a quarter of a barrel in a strap-tub. We then rowed off to the vessel; both Mr. Keans and myself went on board. I think it was the captain who settled with me for the bait. That, with what I had caught the night before, made a barrel and a quarter. That morning we had a half a barrel between us. The night before I took three quarters of a barrel on board the vessel. The night before was the first time I saw the man who settled with me for the bait. I was working at some gear in the evening when he came to my fish-house. I had the three-quarters of a barrel of bait then standing in my fish-house. He asked me if I would sell it, and I told him yes. He first asked me if I had any bait, and I told him yes. He then asked me to take it on board his vessel. He then told me to set my nets that night, and said, "I will take whatever you get in the nets to-night." He was to pay me one dollar and twenty-five cents per barrel for the bait. I set my nets that night, but only caught a quarter of a barrel. The first evening I took off to the vessel three-quarters of a barrel. I was alone in the boat the first time. On that occasion I did not go on board, but remained along-

side. The man took the fish on deck, and I did not see what he did with them, and I returned to the shore. I did not get paid that night, but he said, "I have no change, and you will have to wait until the next morning, and we will settle all together." The next day I settled for all. He paid me down in the cabin. When Mr. Keans came along that morning I was clearing the herring out of the nets and getting them ready to take on board the vessel. When I took the nets in that morning I was alone. I brought them on shore and was taking them out of the nets when Mr. Keans came along. Then we put both our lots of fish together and took them on board the vessel. The money that I received for them was divided with Mr. Keans after we went back on shore. When I first saw the man from the schooner, and when he came to my fish-house, it was somewhere between four and five o'clock in the afternoon. The vessel was down the gut; she had not come to anchor, but was working in. He did not tell me his name, and I didn't ask him to do so. He said he would take what I got in the morning. I went out to set my nets that night just before dark. The nets were on shore when the man was there. I set them right abreast of my fish-house. The vessel was lying at Porter's eddy that night. Next saw the vessel on shore on the west side of Digby gut the next morning after I had been on board with Mr. Keans. I was going out fishing. It is right square across from Victoria beach where she drifted ashore. I saw a vessel Saturday morning going across the bay with a steamer. Friday morning I saw a steamer lying in the harbor, and Saturday morning I saw a steamer with a small vessel in tow going to the northward.

Cross examined by Mr. MEAGHER:

When I saw her ashore it was early in the morning. I should think it was between five and six o'clock. I don't think it was later, on account of the tide, as we have to fish according to the tide. It is about six miles from where she was ashore up to Bear island. When I saw the steamer with the vessel in tow I was seven or eight miles distant. At that distance I could not say what vessel or what steamer it was.

STEPHEN TAYLOR.

Signed, deposed, and sworn at Halifax, in the county of Halifax, this 6th day of December, A. D. 1886, before me, the contents having been first read over and explained to the said Stephen Taylor.

W. W. MCLELLAN,
Commissioner.

Adjourned *sine die*.

(Indorsed:) Queen v. Adams. Keans and Taylor.

JANUARY 8, 1887.

Defense resumed.

ISIAH ROBERTS sworn.

Examined by Mr. MEAGHER:

I am forty-four years of age and have been going to sea twenty-six years; have been engaged at bank fishing for twenty-six years on almost all the banks, viz: Grand banks, Quero, Western banks, etc. I generally sailed from Gloucester. I was one of the crew of the *David J. Adams* last spring. She left Gloucester about the tenth April on the last trip that I was in her. When a vessel is fitted out for hand-

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line fishing she is generally described as being fitted out for George's bank fishing. On that trip we fitted out for to catch codfish and halibut; for hand-line fishing. We caught fish on that voyage before the vessel was seized. We caught codfish and a few halibut; these were caught on the Western bank about ten miles from Sable Island. We could see the land from where we lay. It was ten miles from where we lay to the island. On that voyage we also caught fish about thirty-five miles further to the westward on the Western bank; that would be about forty-five or fifty miles from the nearest land, and the nearest land would be the island. We did not catch fish anywhere else on that voyage. We tried for fish at Brown's bank; the northern edge of Brown's bank is about thirty-five miles from Cape Sable; where we tried for fish was on the southeastern edge of the bank, which would be about fifty-five miles from the nearest land; the three places spoken of were the only places where we tried for fish. We dressed and split and salted the codfish and dressed and iced the halibut when we got through fishing. I remember going into the Annapolis basin with the *Adams*, and while we were in the basin we got some bait and ice.

Question. Where was the bait that you bought intended to be used?
(Objected to by Mr. GRAHAM.)

Answer. It was intended to be used on Brown's bank.

Question. Besides buying the bait and ice what was done while the vessel was in the basin in the way of fishing or in getting ready for fishing?

Answer. Nothing but cutting up ice and icing the bait.

Question. While you were in the basin I understand that you anchored up towards Bear river?

Answer. Yes.

Question. Was her place of anchorage changed?

Answer. Yes; on account of shoal water. We moved to get into deeper water. I remember the fact of the vessel being seized. I remember the time she was lying up in Annapolis channel, about six miles from Digby town. That morning we got under way a little before daylight; the captain had charge in getting her under way. I was on deck.

Question. By the time you had the sails on her how far could you see?

Answer. A couple of miles, as it was a very clear morning. From the time we began to get under way until we had sails on it would be about an half hour.

Cross-examined by Mr. GRAHAM:

I was not mate of the vessel; those vessels do not carry any mate. I have been in the vessel about three years and I belong to Yarmouth. I am a naturalized American citizen, and have been so for the last eight years. I was on shore while in the Annapolis basin; was on shore the time we bought the ice; I went with the captain in the boat. I was not on shore at Digby gut while the vessel was there. James Swineburg, Samuel Hooper, John Brown, Calvin Cook, Joseph Henley, Elroy Pryor, Ed. Symonds, Fred. Fisher, Frank Arnson, Joseph Boucher, John Beaton, myself, and the skipper composed the crew of the *Adams*, thirteen all told. When we got the ice I believe that all hands were on shore except the cook, or there might have been one man left on board besides the cook. That was just to the eastward of Bear island, a couple of miles from where you go up to Bear river. We came to anchor near Bear island between twelve and one o'clock in the day. The captain and one man went on shore first; we anchored before they went on shore; the captain came back to the vessel in a boat; after-

wards the captain and the man who went on shore with him came on with the bait; it was fresh-herring bait. The captain and all the men then went on shore for the ice; I helped to break up and weigh the ice; we hoisted it down into a team and took it down to the boat; the crew handled the ice when it came on board, and I took part in that. There were two and one-half tons of ice; the whole crew helped to break up the ice after it came on board, and we iced the herring bait with it; that was while we were at anchor; we do not require to ice halibut very often; when once iced they will keep three weeks. The vessel is boxed off into pens four or five feet square; we have six pens on board where we ice the bait and fish; that includes the ice-house; the places for the ice and those for the fish are all the same. A large herring will generally make four or five pieces for hooks for codfishing, and for halibut the same when we use hand-lines. We were not fitted out for halibut fishing, but we could catch halibut with the same gear used for codfishing. I think there were five small halibut on board; they would weigh one hundred and fifty or two hundred pounds in all. Soon after we got under way we saw the *Lansdowne*, as soon as it got light enough; we did not see her before we got our sails up because it was not light enough; we were under way and standing out towards the gut when we saw the boat of the steamer come around her bow, and then we thought it must be a cutter; the cutter's boat boarded us while we were sailing. The man came alongside and I heard the questions; I am a little hard of hearing. He asked the captain what he was doing there, and the captain said that he came in to see his relatives. I do not know whether he saw his aunt or not. Nothing was said about bait that time. He asked our captain what his name was and the owners of the vessel, where she belonged, and her tonnage, and told the captain to go out to sea. He asked about bait the second time the boat came on board. The captain told him that there was bait there on board, and he said he thought from the size of the herring that they were about ten days old. There was a boy about eighteen years old who brought off the bait when we lay near Bear Island. We came to anchor at first when we took in our ice and bait, and after taking in the bait and ice we dropped off to deeper water. The captain paid for the bait and ice. I believe there was trouble in getting change there. It is a farming country place where we anchored, and not thickly settled, the houses being one-quarter or half a mile apart. I had been in the basin before and I knew it. The gut is about one mile across with very high land on each side; on the western side it makes a straight shore, the other side is a cape of land. At the point where you enter the gut there are about 25 fishermen's houses; on the west side as you go in there is a light-house; from the light-house in to Digby is about one and a quarter miles; there are no houses after you leave the light-house until you get up about half a mile; there are no villages on either side; there are no farms on either side of the gut, but it is high, barren land; in the gut itself probably there are twenty houses on the east side, but on the other side there are none until you get half way up to Digby town. The people who live there are mostly fishermen. I do not know Mr. Ellis; I am not acquainted with any man in the gut; I do not know the Fromes; while I was in the basin I did not see any person that I knew; I did not find out the names of the persons who sold the ice; there were two men in the ice-house besides the boy; they were two middle-aged men; the boy was driving the team; I believe that the two men and the boy were all who were there; I do not think that some of the ice was taken in a dory; we used a lighter; I think

ISLAH ROBERTS.

W. W. McLELLAN,
Commissioner, etc.

HENRY R. LAWRENCE sworn.

Have been engaged in fishing about twenty years in both fresh and salt fish. I am familiar with the use of ice with fish. In that respect I have had about ten years' experience. Putting fresh fish on ice will not cure, but will preserve them for a time. It will preserve cod-fish three weeks and halibut about the same, and herring not more than three weeks at the most.

A good deal depends on the ice-house as to how long the ice will keep. With halibut we have to supply the ice only once, except on top when it is melted, and then we replenish it. In the summer time we may have to replenish it once or twice during eight or ten days, as the ice is continually melting on the top.

HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL "DAVID J. ADAMS"
 and her cargo. } No. 472.

I, Wilson W. McLellan, of the city and county of Halifax, in the province of Nova Scotia and Dominion of Canada, commissioner and stenographer, hereby certify that in pursuance of an order of this honorable court, passed the 15th day of September, A. D. 1886, appointing me a special commissioner for that purpose, I administered an oath to, and

proceeded with the examination of, the witnesses who were produced before me at Halifax on the days and at the times in the foregoing 61 pages mentioned, in the presence of counsel for both parties, and that page 62 contains the testimony of Henry R. Lawrence, taken in open court before his lordship Chief Justice McDonald.

That the testimony of said witnesses was taken by me in short-hand and afterwards transcribed into long-hand, and that the foregoing 62 pages include all the evidence so taken, and are correct.

That I have carefully compared the said 62 pages with the originals on file in the office of the registrar of this honorable court, and that the same are true and correct copies thereof.

W. W. McLELLAN,
Commissioner, etc.

IN THE VICE-ADMIRALTY COURT OF HALIFAX, NO. 473.

HER MAJESTY THE QUEEN
against
THE SHIP OR VESSEL DAVID J. ADAMS AND HER CARGO. }

Action for forfeiture.

Writ issued 10th May, A. D. 1886.

Before the chief justice in chambers.

On argument of the motion and upon reading the affidavits and papers used thereon, it is ordered that Samuel Hooper, James Stewart, John Brown, E. D. Simmons, Joseph Butcher, Isaiah Roberts, John Bealon Elroy, Prior Frigel Fischer, Joseph Henley, Calvin Cox, and Frank Aenser, and others, being the crew of said vessel at the time of her seizure at Digby and witnesses for the defence herein, shall be examined before ——— at Boston, in the State of Massachusetts, a commissioner appointed for that purpose.

The examination of said witnesses shall begin on the 10th day of November, now next ensuing, or at such other date as may be mutually agreed upon between the counsel for the parties herein, and said examination shall go on continuously from day to day so far as may be practicable, but with power, nevertheless, to said ——— to adjourn the same from time to time as may be found necessary.

The said ——— is hereby authorized to swear all such witnesses, being part of said crew, as shall be produced before him by the defendant. Each witness shall be examined on oath or affirmation or otherwise in accordance with his religion, by or before the said commissioner, and shall be examined separate and apart from the other witnesses, and if any one or more of such witnesses do not understand the English language then the examination of such witness or witnesses shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioner, and to be previously sworn according to his or their several religion, by or before the said commissioner, truly to interpret the questions to be put to the witness or witnesses and his or their answers thereto.

The depositions to be taken under and by virtue of this order shall be subscribed by the witness or witnesses and by the commissioner.

The said examinations shall be upon interrogatories and cross-interrogatories in writing, to be annexed to the commission to be issued under this order, with leave to the plaintiff to cross-examine said witness *viva voce*, and also with leave to the defendant to re-examine said witnesses *viva voce* upon new matters arising out of such *viva voce* cross-examination, as well as upon the examination under said cross-interrogatories.

The defendant shall serve upon plaintiff's solicitor a copy of the written interrogatories he desires to have put to the said witnesses, within eight days after this date, and the plaintiff's solicitor shall within eight days thereafter serve upon the defendant's solicitor a copy of the cross-interrogatories he desires put to said witnesses, and if the plaintiff intends to cross-examine said witnesses, or any of them, *viva voce* he shall give notice of such intention at least six days before the time fixed for such examination. If the plaintiff does not within said period of eight days furnish the defendant's solicitor with the written cross-interrogatories he desires put to such witnesses, the defendant shall be at liberty to forward the commission without any cross interrogatories on the part of the plaintiff, but the witnesses may nevertheless be cross-examined *viva voce*.

The place and hour for the examination of said witnesses shall be fixed by the commissioner, who shall give at least — days' notice thereof to the solicitors for said parties, and in case one of said parties shall fail to attend, then the commissioner shall in his discretion be at liberty to proceed with the examination of such witnesses *ex parte*, or to adjourn such examination.

The depositions of said witnesses, together with any documents referred to therein or produced by the witnesses, or any of them, shall be sent to the register of this court at Halifax by the said commissioners, together with this order and the writ of commission which is hereby directed to be issued in accordance with the provision hereof, and such depositions may be given in evidence on the trial of this action by and on behalf of the defendant, saving all just and legal exceptions in the same manner as if such depositions had been taken in open court on the trial of this action.

Neither Aldon Kinney, the master of said vessel, nor Jesse Lewis, the owner thereof, shall be examined before said commissioner.

The costs of this order and incident thereto and upon the motion therefor and upon and under the said commission shall, be subject to the further order of this court.

The said depositions, together with this order, said commission, and any documents produced upon said examination, shall be returned to this honorable court on or before the 25th day of November now next ensuing, or within such extended time as the judge may order.

Dated at Halifax the 15th day of October, 1886.

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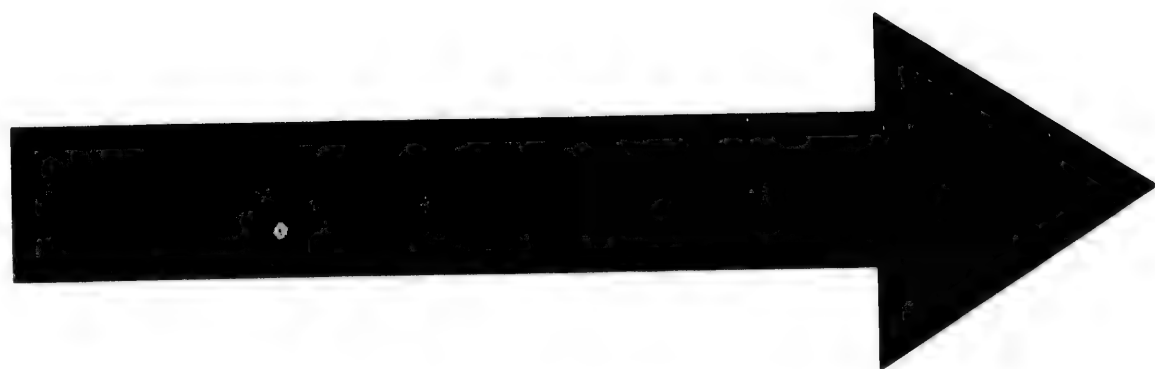
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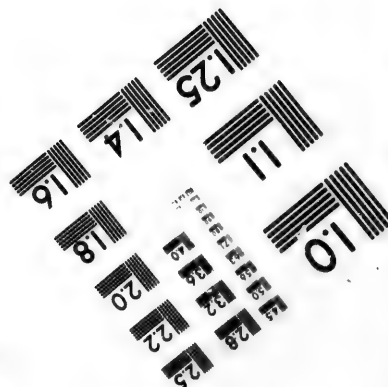
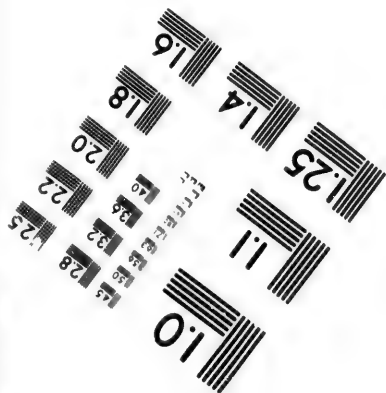
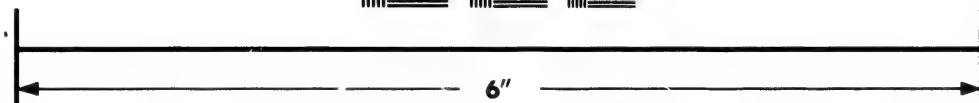
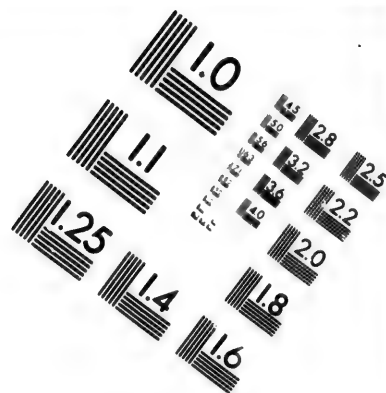
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IN THE VICE-ADMIRALTY COURT OF HALIFAX, 1886.

BETWEEN HER MAJESTY THE QUEEN, PLAINTIFF,
against
 THE SHIP OR VESSEL "DAVID J. ADAMS" AND HER CARGO. }

Action for forfeiture.

Writ issued 10th May, 1886.

Interrogatories to be put to witnesses to be examined at Boston on behalf of defendant:

1. State your name, age, occupation, and place of residence.
2. If you say you are a fisherman, please state what experience you have had as such, and where.
3. Have you ever had any experience in halibut fishing on the banks? If so, how much?
4. Do you know the schooner or vessel *David J. Adams*, of Gloucester, Massachusetts?
5. Were you ever employed in her as one of her crew? If so, when and for how long, and on what voyages? Answer fully.
6. If you say you formed one of the crew of said vessel at any time, please state whether or not you sailed in her as one of her crew on a voyage made by her last spring.
7. If, in answer to the next preceding interrogatory, you say you sailed in said vessel on said voyage made by her last spring, please state where she sailed from, and give the date and place she sailed from, and where she departed for.
8. What was the nature of such voyage? Answer fully.
9. If you say said vessel was then bound on a fishing voyage, please state what kind of fish she was fitted out to catch, and where she fitted out for.
10. Were any fish caught on said voyage? If so, where and by whom of said crew? Answer fully and give the quantities caught as near as you can.
11. What kind of fish were caught and in what way were they caught on that voyage?
12. Describe fully the mode and means by which the fish were caught on said voyage.
13. What period of time elapsed between the time each catch of fish upon said voyage was made and the time when the fish so caught were cleaned?
14. Give the time which elapsed in each case between every step taken towards preserving said fish, from the time the fish were caught until the time they were finally put away, not to be disturbed again until the end of the voyage?
15. When did you leave said vessel, and where?
16. State as accurately as you can the place or places where said fish were respectively caught on said voyage, and state in respect to each time of fishing, as nearly as you can, the distance in miles said vessel then was from the nearest land of the province of Nova Scotia.
17. Have you in your last answer specified all the places at which said vessel, her master and crew, or any of them, fished for fish, took fish, or attempted to fish, while on said voyage? If not, please state what places you have omitted.

18. Did said vessel while on said voyage catch fish at any time or place within three marine miles of any part of the coasts, bays, harbours, or creeks of the Dominion of Canada? If so, when and where and how often? Answer fully and accurately as you can as to the place or places of fishing, and give, if you can, the bearings and distance of said vessel at such time or times, respectively, from any cape, light-house, or other prominent landmark nearest to said vessel at such time and times, respectively.

19. Describe what was done to the fish caught upon said voyage for the purpose of preserving them.

20. Was, or was not, anything done towards that end while said vessel was within three marine miles of any of the coasts, bays, harbours, or creeks of Nova Scotia during that voyage? If so, answer when and where as fully and particularly as you can.

21. Give the names of the several ports or places said vessel entered while on that voyage, and why she entered them, respectively.

22. Did you remain on board of her while she was in said Annapolis basin up to the time of her seizure?

23. If you say you did not remain on board of her all that time, state how often you were absent and how long you were absent from her; and specify where you went, and the time you left, and the time you returned in each case, and on what duties or business you went.

24. State, if you can, who went and returned with you.

25. Was or were any preparations made by said vessel, her master or crew, or any of them, upon said voyage with the intention or for the purpose of fishing for fish or taking fish within three marine miles of any part of the coasts, bays, harbours, or creeks of Nova Scotia or of Canada?

26. Did or did not said vessel or her master, or some of her crew, fish for fish, take fish, or dry or cure fish while within three marine miles of any part of Canada during said voyage?

27. Was any bait or other article intended for use in curing or preserving fish bought or otherwise procured by said vessel while she was in said basin of Annapolis upon said voyage? If so, when and where, and from whom? Answer fully and give particular details.

28. In what manner, for what purpose, and when and where was the article or articles so bought or procured in said basin intended to be used?

29. If you say that bait was bought, please state if it was bought for the purpose or with the intention of being used to fish for fish or to take or catch fish within three marine miles of any part of the coasts, bays, creeks, or harbours of Nova Scotia or of Canada, or how otherwise.

30. Did you ever state or admit, or did the master or any of the crew of said vessel, to your knowledge, ever state or admit that you or the said master, or any of the officers or members of the crew of said vessel, at any time during said voyage, made preparations to fish within three marine miles of any land in Nova Scotia? If so, by whom, to whom, and when and where was such statement or admission made?

31. Did you ever state or admit, or did the master or any of the members of the crew of said vessel, to your knowledge, ever state or admit that you or the said master or any of the officers or members of the crew of the said vessel fished for fish, caught fish, took fish, or dried and cured fish while in said basin during the months of April or May last, or at any place within three marine miles of any part of Nova Scotia during the year 1886? If so, by whom, to whom, and when and where was such statement or admission made?

32. If you state that any such admissions or statements as those referred to in the two next preceding interrogatories were or was made, please state whether or not such statement or admission was true or false.

33. State fully everything that was done, if anything was done, to your knowledge, by or on board of said vessel while she was in said basin of Annapolis during said voyage towards the prosecution thereof.

34. If you know anything further favorable to the defense herein, please state the same as fully as if you were specifically interrogated in relation thereto.

35. State where you were when the codfish were salted.

N. H. MEAGHER,
Def'd's Solicitor.

IN THE VICE-ADMIRALTY COURT OF HALIFAX.

BETWEEN HER MAJESTY THE QUEEN, PLAINTIFF,
against
THE SHIP OR VESSEL "DAVID J. ADAMS" AND HER CARGO. }

Action for forfeiture.

TESTIMONY FOR DEFENDANTS.

It was agreed by counsel for both parties that the taking of testimony under above commission should begin Nov. 11, 1886, at 11 o'clock, a. m.

Nov. 11, 1886.

JAMES SWANSBURG, being first duly sworn, in answer to the interrogatories annexed to the commission herein, testified as follows:

Ans. 1. James Swansburg; twenty-six; cook on fishing vessels; Shelburne, Nova Scotia.

Ans. 2. Have had experience banking, seining ten or twelve years—fishing on the Western banks, George's and Grand banks.

Ans. 3. No, sir.

Ans. 4. Yes, sir.

Ans. 5. Yes, sir; last winter, five trips; was on the sixth when taken, all the voyages were to George's banks.

Ans. 6. I did.

Ans. 7. From Gloucester; couldn't tell the date; in March, I think, or April, for Eastport, Me.

Ans. 8. For bait and codfish.

Ans. 9. For codfish and halibut; fitted out for George's.

Ans. 10. Yes, sir; at Western bank and on Brown's, by all hands; about 13,000 weight of salt cod and about two thousand weight of halibut.

Ans. 11. Codfish and halibut by hand-lines, off the deck.

Ans. 12. Caught on hooks and lines; hand-lines, used no trawls or seines.

Ans. 13. We caught them in the morning and dressed them at night; put them under salt them.

Ans. 14. After we put them under salt we left them there until we should get back home; did nothing to them.

Ans. 15. At Digby, Nova Scotia, Friday, early in May; left Eastport Wednesday, and she was seized the Friday after that.

Ans. 16. On Brown's, about thirty to thirty-five miles from Cape Sable, and on Western banks, which I suppose was forty to fifty miles from the nearest land; might be more.

Ans. 17. I have.

Ans. 18. (Question objected to as leading and as involving questions of law, and as being really the question at issue in the case.) No, sir.

Ans. 19. We salted the cod, and put ice on the halibut.

Ans. 20. (Objected to as before.) No, sir.

Ans. 21. Eastport for bait, and Digby for bait.

Ans. 22. Yes, sir.

Ans. 23. I remained on board all the time.

Ans. 24. I remained on board.

Ans. 25. (Objected to as before and also as eliciting an intention or purpose and not a statement of fact.) No, sir.

Ans. 26. (Objected to as leading.) No.

Ans. 27. (Objected to as to interrogatory 25.) We procured bait at Bear Island, don't know the man's name; on Friday—the day after we got there.

Ans. 28. (Objected to as to interrogatory 25.) Out on George's, Brown's, and Western banks, for catching codfish and halibut when we could get there.

Ans. 29. (Objected to as to interrogatory 25.) No, sir.

Ans. 30. No, sir.

Ans. 31. No, sir.

Ans. 32. I did not so state.

Ans. 33. Only buying bait and ice.

Ans. 34. I know nothing further.

(Question put *viva voce* by consent of counsel.)

Int. 35. State where the vessel was at the time said fish were salted.

Ans. 35. On the banks.

Cross-examination by WALLACE GRAHAM, Esq., of counsel for complainants:

Ans. The ice was purchased from the same man at Annapolis basin as the bait was, I think. I was on board when the ice came on board; couldn't say how much, a large boat load from the shore, and some in the vessel's dory. The skipper Alden Kinney and two or three of the men went ashore for it; don't know their names; a young lad came off with the bait; don't recollect of hearing his name; couldn't say whether captain went ashore with the men in the dory; I didn't hear any of the men from the shore called Vroom or Spurr; had never been there before; know it was near Bear island. It was between one and two in the afternoon that the bait come off; ice a little later. We had come to anchor; didn't come to anchor when captain first went ashore; tide wouldn't let us go in, and we tacked back and forth. Don't recollect hoisting anchor and dropping out later. We got the bait and the ice quite away from the weir—we laid off the weir. I never saw the boy go on board or on board. I suppose he was fifteen or sixteen years old. This was on Thursday, the day before we were seized. We lay off the weir all Thursday night. Friday morning we got under way about sunrise. We saw the *Lansdowne* about the time we got under way. This bait was herring; couldn't say whether it came out of the weir. Should think we purchased altogether about eight barrels, three or four from this man, and the rest down further towards the gut; don't know from

whom. Got these last barrels on Wednesday afternoon, near the gut leading into the basin. Captain went ashore for that about four o'clock Wednesday afternoon, and brought out three or four barrels. We layed in the gut Wednesday night. He didn't go for more Thursday morning to the same man, as far as I know; can't tell whether any came aboard then. There was a weir near where we got it on Wednesday. We had left Eastport that morning; went into Eastport for bait; got some; couldn't say how much, two or three barrels, more or less; I didn't handle it, and don't know; got all we could. Thursday morning we got under way little after sunrise; that forenoon we were off Digby pier, standing off towards Bear island, off Digby pier about nine o'clock; we were beating over; we anchored inside the gut Wednesday night before sundown. Wednesday morning it was calm, and it breezed up after we got under way. I didn't hear the man's name we got the bait from; didn't see him. The bait that came from the shore was herring. Don't know whether or not there were persons on board from the shore Wednesday and Thursday. There were two on board Friday; they were reporters I heard. Don't know who of the crew went on shore with the captain on Thursday. The skipper looks after the ice when it comes on board; two or three men handled it and stowed it away. We had ice-houses on board where we kept the herring packed in ice, a layer of ice and a layer of herring. Don't know who packed this herring; know it was packed in the ice-houses. It had to be done as soon as herring came aboard, and was so done. We had two ice-houses for bait, about amidships, between two hatches, with a door on each side of ship; we had two in order to keep the bait better. The halibut were in a pen alongside the bait. We didn't get out of ice; had some, but couldn't say *how much; not enough*. Couldn't say whether we got two tons and a half of ice or not. The halibut we preserved in ice, in layers. The skipper and part of crew attended to that. She was fitted out for codfishing also. Hails from Gloucester; owner lives there. Got two baskets of potatoes there besides bait and ice. I gave a deposition before the consul at Digby; didn't tell about the ice; he didn't ask; he didn't ask whether we got anything else. I was on deck when the *Lansdowne's* first boat came on Friday; they didn't come on board, but asked the captain some questions. I heard the captain tell them he had been there seeing an aunt; didn't hear him say he had no bait; didn't hear the officer ask if he had. They asked him what he had been doing over there. I don't know whether the officer asked them whether he had bait. On Friday, when he came the second time, the officer asked that; they boarded us three times after we got under way. The captain said then that bait was ten days old, or that the herring were ten days old. The second time, I think, the sailing captain came with the officer and crew that had been on board before. The mate of the *Lansdowne* went into the hold, I think. I heard no conversation to the effect that the officer of *Lansdowne* said "it was reported that you have bought bait," and the captain said, "Bring the man here and I will call him a liar." I didn't hear any such conversation; it may have taken place. We got aground going out that Friday morning. I think they made us three visits before the seizure; am not sure. I had heard of the *Lansdowne* before, and what she was engaged in; heard she was tending the light-houses and putting down buoys; heard she had a gun and was looking after American fishermen. Knew what the first boat was after. Don't know where I heard her business; may have been before I left Gloucester; had heard about the law. Carried away our main topmast first night out before putting into Eastport; was at Eastport two or three days. Don't know

from whom the bait was purchased the second time in Eastport; don't think I got any ice there. Got herring at Eastport for bait; same kind as at Digby. We left at the time of seizure enough grub for three weeks' supply; about a barrel of beef, half barrel of pork, two barrels of flour. We were nearly out of potatoes when we got there. There was a bushel of beans left in her, half barrel of sugar, coal, and tea and coffee.

Redirect examination by C. L. WOODBURY, Esq., on behalf of defendants:

There were four or five hogsheads of salt on board, perhaps more. The deposition was before the American consul at Digby; Mr. Phelan, the Halifax consul, came down there and took it. We had one dory.

Int. Where did you carry it?

(Objected to as not inquiring into new matter arising out of cross-examination.)

Ans. On the davits over the stern.

Ans. When we got under way Thursday morning, I think we were heading out; we were when I went on deck; the tide was coming in. When it breezed up she was inside the gut, at the mouth of it; we turned and went up town. Wednesday night we lay two miles from Digby. Thursday after we turned we passed a quarter of a mile from the town. Bear island is about two miles from Digby, and we anchored to the eastward of it. Friday morning, wind was about south, very light. *Lansdowne* was laying up to the town then. We layed our course out until we got ashore right in the gut two miles from Digby; layed there about an hour. The first boat came to us at Bear island; came next after we got off from ground; very little wind then; flood tide strong; tide set us back towards Digby. The second boat, the sailing master, Captain Dalsin, came aboard and examined cargo; asked skipper no questions I know of; he returned to *Lansdowne*; 15 or 20 minutes later the boat came back with the mate; he ordered us to put about for Digby; the *Lansdowne* was then heaving up her anchor; she ran past us, and after we put back she came down to us. Don't know as to order to anchor. After anchoring, another boat's crew of two men, not armed, came to us. We had layed there three hours before being ordered to haul down sail; three or four of their men were then on board and kept possession of the schooner, and she lay under the gun of the *Lansdowne*.

Saturday morning we were informed we must leave the ship; vessel was at Digby; we then left. We went aboard the *Lansdowne* and were landed at Saint John by her. When we sailed from Eastport the last time I didn't know where the vessel was bound.

(Signed)

JAMES SWANBURG.

DEPOSITION OF EMERSON D. SIMMONS.

Nov. 11, 1886.

EMERSON D. SIMMONS, being first duly sworn, in answer to interrogatories proposed under within commission, testified as follows, viz:

Ans. 1. Emerson D. Simmons; twenty-six; fishing; Gloucester, Mass.

Ans. 2. Been in the business since I was nine years old, fishing out of Gloucester and Portland at the banks.

Ans. 3. I have; one year.

Ans. 4. I do.

Ans. 5. I was; on five trips; the sixth I was seized; cod-fishing to the banks.

Ans. 6. I did.

Ans. 7. Sailed from Gloucester in April, I think; sailed for the banks.

Ans. 8. Cod fishing, salt-fishing, catching fish and salting every day; halibut we iced.

Ans. 9. Codfish and halibut; fitted out for the banks.

Ans. 10. They were caught on Western banks and Brown's banks, somewhere near 13,000 pounds codfish, by all the crew.

Ans. 11. Codfish; caught on hand-lines.

Ans. 12. Caught on hand-lines, with herring for bait.

Ans. 13. Fished through the day and cleaned the fish every afternoon.

Ans. 14. Fished through the day; salted them in the afternoon, not to trouble them until we arrived home.

Ans. 15. At Digby, when she was taken.

Ans. 16. On the Western banks and Brown's banks; the nearest land, I should think, was thirty-five miles.

Ans. 17. Those are all.

Ans. 18. (Objected to as to int. 18 in Swansburg's deposition.) No, sir.

Ans. 19. We dressed them and salted them; iced the halibut.

Ans. 20. (Objected to as before.) There was not.

Ans. 21. Eastport, to bait; we got our first bait there; we returned to Eastport after bait. I think we got very little there, two or three barrels there; we couldn't get any more there, and the next port we got to Digby; I suppose we went there for bait, but I didn't hear him say.

Ans. 22. I did.

Ans. 23. I was on shore about two hours the first evening we went there; I went ashore to rove around in the evening about six o'clock; got aboard about eight.

Ans. 24. A number of the crew; I couldn't tell who they were now.

Ans. 25. (Objected to as before in int. 25, Swansburg.) There were not.

Ans. 26. (Objected to as before.) No, sir.

Ans. 27. (Objected to as before.) We got bait at Digby there; I don't know from whom; I was not with him when he got it; was on board the vessel; I don't know what day.

Ans. 28. (Objected to as before.) Used for cod-fishing on the banks as soon as we could get to the banks.

Ans. 29. (Objected to as before.) It was not.

Ans. 30. No, sir.

Ans. 31. No, sir.

Ans. 32. I have stated it was not made.

Ans. 33. We went there to get bait, I suppose; we got ice, I believe; that's all that I know.

Ans. 34. I know of nothing further.

Int. 35. State where the vessel was at the times said fish was salted.

Ans. On the banks.

Cross-examination by WALLACE GRAHAM, Esq., counsel for complainants:

I think it was Wednesday evening I was ashore at Digby; I am not certain. Herring came aboard before that. This was the first place after we got by the light Victoria beach. It was the day we left Eastport. Bait went aboard somewhere about four or five o'clock. I did not go

ashore with captain and couldn't tell the names of the men who went with him; I think only one went with him; I don't think captain was ashore more than an hour; couldn't tell how many barrels of bait they brought; didn't see it at that time; I was forward when it came aboard, but I knew of it. We got the ice close by Bear island. I went ashore after tea; saw no one I knew; talked to no one; was in no house. Came to anchor Wednesday night down at the beach. Got under way next morning between seven and nine; about nine. We were at anchor about a mile from the light and about two from Digby. We stood over towards Bear Island; saw one weir, where we anchored; got some bait from same man we got ice from; had nothing to do with handling it; we had to ice the bait after it got aboard; I helped; did it in the basin; put a layer of ice, then a layer of bait; broke up the ice with forks, to keep bait fresh.

I helped to get under way Thursday morning; it was near nine o'clock; after breakfast. No one went ashore, that I know of, that morning. I went with the captain to get the ice at Bear island—three or four; four besides myself and captain went; don't recollect who. The herring came in a boat; a boy of sixteen came with it; alone, I think; it didn't come off in the dory.

I didn't go after the bait; think two men went with captain Thursday; don't know who they were; they were gone about an hour. The three came off again in the dory without bait, and then the boy came, alone I think; he sculled it off; don't know his name; didn't hear the name of Vroom. I went then with four men and the captain for the ice; we all came off with the ice, except captain, who remained ashore; he wasn't ashore over an hour after that. Don't know what time we came to anchor off Bear island; it was in the forenoon; after we got the bait and ice we got under way and dropped off and anchored. There was no wind to get out and we waited overnight. I saw the bait that came aboard there; I helped put it on the ice. I saw no one ashore I knew; there were two or three men there; don't know their names.

Redirect examination by C. L. WOODBURY, Esq.:

Ans. The ice was fetched off in our dory, and in a boat we got there. Thursday morning we started out and we got pretty well out to the light and the wind died away and the tide set us back and we put up to Bear island.

(Signed)

E. D. SIMMONS.

Adjourned to Nov. 16, at 10.30 a. m.

DEPOSITION OF JOSEPH HANLEY.

Nov. 16—10.30 A. M.

Parties appeared and depositions proceeded as follows:

JOSEPH HANLEY, being duly sworn, in answer to the interrogatories in the commission annexed, testified as follows:

Ans. 1. Joseph Hanley; twenty-three; fishing; residence, St. George, N. B.

Ans. 2. I have been fishing partly in New England vessels out of Eastport and Gloucester for eight years at least; never did anything else; fishing on Western banks, George's, and La Have.

Ans. 3. No, sir; never did.

Ans. 4. Yes, sir.

Ans. 5. Yes, sir; begun in March last and was in her up to time of seizure on a Western bank voyage.

Ans. 6. I did.

Ans. 7. Sailed from Gloucester; can't tell exactly when; went to Eastport; when we left Eastport couldn't say where we intended to go; went for bait; we left Eastport for the banks the first time.

Ans. 8. Fishing.

Ans. 9. Codfish; fished out for George's.

Ans. 10. They were caught on the Western banks; all of crew caught some; about 8,000 pounds of cod, I should think; don't know how much halibut.

Ans. 11. Codfish and halibut; caught by hand-lines.

Ans. 12. We caught them on hand lines, putting bait on our hooks and letting lines run to bottom.

Ans. 13. About six hours.

Ans. 14. We salted them the same day we caught them; that was about all we could do.

Ans. 15. Left her in St. John.

Ans. 16. The first place was on La Have; I should judge thirty or thirty-five miles from the nearest land, and Western bank I think about sixty miles from land.

Ans. 18. Yes, sir.

Ans. 18. (Objected to as in previous deposition.) No, sir.

Ans. 19. We dressed them, cut heads off, washed them, put them below, and salted them; the halibut we iced.

Ans. 20. (Objected to as before.) No, sir.

Ans. 21. Eastport and Digby basin. I suppose it was on the intention of bait.

Ans. 22. Yes, sir.

Ans. 23. I was on her all the time she was there, except one evening we went ashore for two hours. We went ashore to see the place about six o'clock and returned about eight.

Ans. 24. Most of her crew.

Ans. 25. (Objected to as before.) Not as I know of.

Ans. 26. (Objected to as before.) No, sir.

Ans. 27. (Objected to.) Yes, sir; we got bait. I don't know exactly how much or the man we got it from; in Digby basin and Eastport.

Ans. 28. (Objected to as before.) On Western bank, or La Have, or George's; on the banks where we were fishing.

Ans. 29. (Objected to as before.) No, sir.

Ans. 30. No, sir.

Ans. 31. No, sir.

Ans. 32. I did not so state.

Ans. 33. We didn't do much more than take bait I spoke of. Hove anchor once or twice and tried to get out of the basin. That was about all we did.

Ans. 34. I know nothing further.

Int. 35. State where the vessel was at the times said fish were salted.

Ans. On the banks.

Cross-examination by WALLACE GRAHAM, Esq., of counsel for complainants:

Ans. I think we got ice there. I did not go after the ice; don't know who did; can't say whether Simmons went; can't say how many

went. I think Brown went ashore with captain for bait; am not sure; it was at Bear island, I think. Don't know who went ashore at the gut with the captain. The captain is now at Gloucester; got in Friday last. Three of crew are at Gloucester—the two who have given evidence and a German. One is at George's in a vessel; don't know as to the rest. Calvin Cook was drowned. These men have been sailing out of Gloucester this summer, averaging three weeks' trip, unless they went to the bay. We went to Eastport for bait; think we had ice then; couldn't say how much bait we had when we left Eastport; can't make any estimate; we generally take 18,000 or 20,000 herring when we can get them; five hundred to a barrel. I think we took seven or eight barrels there at a rough guess. Don't think we got any there the second time. The first time we went we got all we wanted; think it was thirty barrels; we took enough for baiting; used part and heaved the rest away; they spoiled; should judge we used half and threw away the rest for want of ice.

Don't know full fare for that vessel; usually stay out four weeks; we had broken fare. We got second time at Eastport; I think six barrels; am not sure; got no ice. Did not use on that bait all the ice we had. Should say we had four tons left when we sailed from Eastport; am not sure about nine tons originally. Left Eastport Wednesday morning, made Nova Scotia shore, Digby basin; spoke a little boat after entering gulf, and they told us there was bait at Bear river; spoke her in the morning, Thursday, and we went ashore in the afternoon. We were beating up. There were five in that little boat. We reached Digby gut Wednesday afternoon, and some bait came off that afternoon; spoke the boat next day; she was fishing for cod. Wednesday evening a number of natives came on board. Don't recollect names of Stephen Taylor or Andrew Keames. Three boats came to us in afternoon Wednesday, and two or three in the evening. Don't think any boat came aboard Thursday. Bait came off in the boats from shore Wednesday; a barrel or two from different boats. These had been caught in nets. What we got at Bear river were caught in a weir. Can't say what the captain brought off in the dory in the gut. I think about two barrels. Don't think any boats came off Thursday before we got to Bear river. Got herrings from three different boats in the evening; think same three that came off in the afternoon to inquire. This was besides the dory. Think they got them out of the nets that morning. Tide was half ebb or half flood. Anchored that night in the basin off a little settlement near the gut. Don't know how much came off at Bear island; couldn't tell how much ice came off; a boy fetched bait; don't know as to ice.

Fitting out for halibut you have to have dories and trawls; for codfish only hand-lines; catch halibut on codfish-lines sometimes; this vessel fitted out for codfish only.

I went on board the steamer at Digby, but took my effects from schooner at St. John.

Redirect examination by C. L. WOODBURY, Esq.:

This vessel had one dory; on her stern davits; the halibut on board was fresh.

Thursday morning we tried to get out of Digby gut; hove anchor, hoisted sail, and tried to get out; spoke this vessel, and they told us there was bait at Bear island, and we went there; think it was flood-tide. Friday we bore up and started out; no wind, and we were under way when seized; we had got about mile and a half from anchorage;

we got ashore in the basin over a mile from mouth of gut; lay there two hours; tide floated us off. We were boarded before we got ashore and ordered out; she boarded us again half an hour after we got off; we were then trying to get out.

Bait, after it is in a vessel a fortnight in summer, couldn't be saved by a vessel load of ice; it spoils, and has to be hove over. That's what I mean by throwing away for want of ice; it was thrown over because it was soft and wouldn't stay on the hooks.

(Signed) JOSEPH HANLEY.

DEPOSITION OF JOHN BROWN.

JOHN BROWN, being first duly sworn, in answer to interrogatories in the foregoing commission, testified as follows:

- Ans. 1. John Brown; twenty-nine; fisherman; St. George, N. B.
- Ans. 2. Been fishing out of Gloucester eight years.
- Ans. 3. Yes, sir; two or three trips.
- Ans. 4. I do.
- Ans. 5. Yes, sir; two winters; last winter and winter before; bank fishing.
- Ans. 6. Yes, sir.
- Ans. 7. Gloucester; couldn't give date; sailed for Eastport.
- Ans. 8. Cod-fishing.
- Ans. 9. For George's; for codfish.
- Ans. 10. They were caught on the Western bank and Brown's; caught by all hands; couldn't say as to quantities.
- Ans. 11. Codfish; by hand-lines; few halibut.
- Ans. 12. Caught by hand-lines, with two hooks to each man.
- Ans. 13. Fished all day, and they were dressed at night.
- Ans. 14. The fish caught in the morning were put away and salted at night.
- Ans. 15. At Digby; was taken on board the steamer; took my clothes out at St. John.
- Ans. 16. On Western banks, all of sixty miles, and on Brown's, thirty or thirty-five miles, I should say, from land.
- Ans. 17. As near as I can remember.
- Ans. 18. (Objected to as before.) No, sir.
- Ans. 19. Salted the codfish and iced the halibut.
- Ans. 20. (Objected to as before.) No, sir.
- Ans. 21. Eastport, first, for bait; we left there for Digby.
- Ans. 22. I went ashore Thursday morning.
- Ans. 23. First went ashore Wednesday night for about two hours, only to walk round; Thursday morning went ashore about nine or ten for two or three hours inquiring for bait.
- Ans. 24. All hands went first time, except two or three. Thursday, Captain Kinney and, I think, Frank Arnson.
- Ans. 25. (Objected to as before.) No, sir.
- Ans. 26. (Objected to as before.) No, sir.
- Ans. 27. (Objected to as before.) Yes, sir; bait and ice. Ice was got near Bear island Thursday; don't know from whom; we got bait Thursday at Bear island; can't say from whom.
- Ans. 28. (Objected to as before.) On the banks, I suppose.
- Ans. 29. (Objected to as before.) No, sir.
- Ans. 30. No, sir.
- Ans. 31. No, sir.

Ans. 32. I did not so say.

Ans. 33. We took bait and ice.

Ans. 34. I know of nothing.

Int. 35. State where the vessel was at the time said fish were salted.

Ans. On the banks.

Cross-examination by WALLACE GRAHAM, Esq., counsel for complainants:

Thursday morning I went ashore about 10 o'clock with captain and Frank Arnson; met a young man about seventeen; he said there were herring in the weir; got of him about 4 or 5 barrels; couldn't say whether captain paid him; didn't on shore; don't know about getting any twenty-dollar bill changed; heard captain ask him if there were any herring there; I took them off in boat with boy; the herring were in the weir; had been caught that morning; captain went ashore and got ice in the afternoon; I was on board then; I think I helped handle herrings on the vessel; didn't help pack them; some of the men were on deck and some below, packing; don't know whether ice was put on halibut then; iced them when first caught; put ice on halibut every two or three days; don't think we used the ice we got at Annapolis; we took our bait before we got the ice; no one in particular looks after icing the halibut; don't know whether we were short of ice; we saw the steamer next morning; supposed it was the *Lansdowne*; knew what she was after; we got the ice near Bear Island.

Was on deck when cutter's boat came on board Friday morning; don't remember what they asked; captain said he had been up to Bear Island seeing some relation; don't know how he happened to say that; suppose they asked him where he had been; didn't hear what was said second time; I was at wheel; made the light at mouth of Digby gut, between two and three Wednesday afternoon; no boats came on board till we anchored; captain went ashore in dory before we anchored; dory, I think, was on the davits; we lowered it, and I think Sam Hooper went with him; he is now at the Provinces, St. George; they brought some herring in the dory; about four barrels, I think; I helped handle them on deck; didn't help pack them; some of the crew packed them that evening in the ice-house; didn't see who they got them from; don't know who it was; they got on board before we came to anchor; boats came off after supper, in the evening; I was ashore, and when I went on board, two or three boats were there; three, anyway; they didn't bring any bait that I know of; I was on deck when we got under way next morning; don't know names of any men from shore; Thursday morning got under way about five o'clock.

We spoke a little vessel the day before Wednesday before we got into the basin, and they told us there was bait in the basin; that was before captain went ashore. The herring the master got in the gut were caught in a weir. The small boat we hailed was catching codfish. Don't recollect what he asked her; suppose usual question, whether any herring were in there. Heard her name, but don't recollect it now; she was ten or twelve ton; there was one man on her and her boat was out fishing. Got no bait from her; two or three hours after that we came to anchor. The herring were such as we eat; didn't eat any of these. Got no codfish from the boat; we had no fresh fish on board but halibut; didn't eat that; don't often eat fresh fish on fishing-vessels; may have been some eaten in the basin, but don't recollect any. Never heard the names of the men at Bear river—never asked.

Captain is twenty-four or five or thereabouts; he is now on the *Proctor Brothers*, Allen, owner, of Gloucester. I am a New Brunswick man. We went to Eastport second time for bait; we had a broken fare; had been gone three weeks from home, usual trip four weeks, and we hadn't a complete cargo; hadn't more than 8,000 or 9,000 pounds of fish. The second time at Eastport, don't know how much bait we got—not as much as we wanted. We were about four hours from Eastport to the gut—from land to land.

Wednesday evening went to no house; saw people on the road; talked with no one; the men scattered, and I don't know whether they asked for bait or not. Didn't know names of men in the boats; don't know how many they were; some were in cabin and some in fore-castle when I came off.

Redirect examination by C. L. WOODBURY, Esq.:

When we spoke fishing-boat, we were two miles off light-house. Our dory was sixteen feet long, I think. Was on deck Friday when *Lansdowne's* boat first came; don't know what they said; that was before we got aground; were aground half an hour; she came a second time as soon as we got off; the steamer was coming down to us then.

(Signed)

JOHN BROWN.

IN THE SUPREME COURT, 1886.

BETWEEN HER MAJESTY THE QUEEN, PLAINTIFF, }
 and } A. No. 1066.
 WARREN A. DOUGHTY, DEFENDANT.

Writ issued on the 20th day of May, 1886.

STATEMENT OF CLAIM.

The plaintiff says:

(1) The harbor of St. Anns, situate in the county of Victoria, in the province of Nova Scotia, together with its outlet to the bay of St. Anns, and also the said bay of St. Anns, all hereafter designated as the bay and harbor of St. Anns, are a portion of Her Majesty's dominions in America not included or lying on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau islands on the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon islands on the shores of the Magdalen islands, or the coasts, bays, harbors, and creeks from Mount Joly on the southern coast of Labrador to one through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, but the said Annapolis basin is a portion of the dominions in America of His late Majesty King George the Third, and now a portion of the dominions in America of Her Majesty the Queen, in respect to which the said United States of America, by article first of the convention hereinafter mentioned, forever renounced any and all liberty theretofore enjoyed or claimed by its inhabitants, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbors thereof, and to which bays or harbors by virtue of the said article American fishermen are permitted to enter for the purpose of sheiter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever.

(2) The above-named defendant, Warren A. Doughty, at present of Baddeck, in the county of Victoria and province of Nova Scotia, in Canada, fisherman, master of the United States fishing schooner *Ella M. Doughty*, was and is a citizen and fisherman of the said United States of America, and not a natural born subject of Her Britannic Majesty Queen Victoria.

(3) The said schooner *Ella M. Doughty* was and is a foreign ship, owned in and by citizens of the United States of America, and was licensed to carry on the fisheries in pursuance of the acts of the United States of America, and was engaged in the prosecution of the fisheries and on a fishing voyage, and is without a license to fish or any license whatsoever in that behalf from the government of Canada or of Nova Scotia, and was not navigated according to the laws of the United Kingdom of Great Britain and Ireland.

(4) The said defendant, Warren A. Doughty, as aforesaid, between the 10th day of May, 1886, and the 14th day of May, 1886, did in and with the said schooner *Ella M. Doughty* enter into the bay and harbor of

St. Anns aforesaid, and within three marine miles of the shores of the bay and harbor of St. Anns aforesaid, for the purpose of purchasing bait wherewith to fish, and for other purposes than the purpose of shelter or repairing damages, or of purchasing wood, or of obtaining water.

(5) The said defendant, Warren A. Doughty, as aforesaid, between the 13th day of May, 1886, and the 17th day of May, 1886, did in and with the said schooner *Ella M. Doughty* enter into the bay and harbor of St. Anns aforesaid, and within three marine miles of the shore of the bay and harbor of St. Anns aforesaid, for the purpose of purchasing bait wherewith to fish, and for other purposes than the purpose of shelter or repairing damages, or of purchasing wood, or of obtaining water.

(6) The said defendant, Warren A. Doughty, as aforesaid, on or about the 14th day of May, 1886, did in and with the said schooner *Ella M. Doughty* enter into the bay and harbor of St. Anns aforesaid, and within three marine miles of the shore of the bay and harbor of St. Anns aforesaid, for the purpose of purchasing bait wherewith to fish, and for other purposes than the purpose of shelter or repairing damages, or of purchasing wood, or of obtaining water.

(7) The said Warren A. Doughty thereby violated the said act of the Parliament of the United Kingdom of Great Britain and Ireland passed in the fifty-ninth year of the reign of His late Majesty King George the Third, entitled "An act to enable His Majesty to make regulations in respect to the taking and curing fish on certain parts of the coasts of Newfoundland, Labrador, and His Majesty's other possessions in America, according to a convention made between His Majesty and the United States of America," and also violated the said convention, which said statute and convention are now in full force; and the said Warren A. Doughty thereby, on each of the said several occasions and for each of the said several offences, forfeited the sum of 200 pounds, equal in Canada currency to \$973.33.

(8) The said Warren A. Doughty, between the said 10th day of May, 1886, and the said 17th day of May, 1886, in the said ship or vessel *Ella M. Doughty*, did purchase and procure bait, that is to say, herring, wherewith to fish, and ice for the preservation on board said vessel of bait to be used in fishing, and of fresh fish to be fished for, taken, and caught by and upon the said vessel and by the master, officers, and crew thereof, and did take fish and was preparing to fish while he and the said ship or vessel *Ella M. Doughty* were within three marine miles of the coasts, bays, harbors, and creeks of Canada, and of that part thereof known as the bay and harbor of St. Anns.

(9) The said Warren A. Doughty, between the said 10th day of May, 1886, and the said 17th day of May, 1886, while he was in the said bay and harbor of St. Anns in the said vessel, was requested to depart from the said bay and harbor of St. Anns by an officer acting under his excellency the most honorable the Marquis of Lansdowne, the Governor-General of Canada, in the execution of orders and instructions from Her Majesty in council, and the said Warren A. Doughty, notwithstanding the said request made as aforesaid, refused to depart from the said bay and harbor of St. Anns.

(10) The said Warren A. Doughty, by virtue of the matter set out in the two next preceding paragraphs, did violate the said act and convention, and did thereby forfeit the sum of 200 pounds, equal in Canada currency to \$973.33.

(11) The plaintiff claims the three several penalties aforesaid of 200 pounds sterling, equal in currency of the Dominion of Canada to \$973.33

each, and amounting in all to the sum of \$2,920, and the plaintiff claims payment from the defendant of the said last-mentioned sum.

Place of trial, Halifax, in the county of Halifax.

Delivered the twenty-second day of October, 1887.

WALLACE GRAHAM,
Solicitor of the Attorney-General of Canada.

[Indorsed.]

Filed October, 1887.

Supreme Court. Queen v. Warren A. Doughty. Statement of claim.

Received October 22, 1887.

N. H. M.

